TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 114

Commonwealth Government of the

JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS, PETITIONER,

vs.

THE NATIONAL CITY BANK OF NEW YORK.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

PETITION FOR CERTIORARI FILED JUNE 8, 1935.

CERTIORARI GRANTED OCTOBER 14, 1935.

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 7, 1935.

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G. R. No. 41032

United States of America

Philippine Islands

Supreme Court of the Philippine Islands

[Court of First Instance No. 32116. Supreme Court G. R. No. 41032]

THE NATIONAL CITY BANK OF NEW YORK
Plaintiff-Appellant

VERSUS

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, Defendant-Appellant

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APPELLATE JURISDICTION

BE IT REMEMBERED that in the above-entitled case and on the respective dates hereinafter set forth, there were had in the Court of First Instance of Manila and in the Supreme Court of the Philippine Islands, among others, the following proceedings:

PROCEEDINGS IN THE COURT OF FIRST INSTANCE OF MANILA

On June 7, 1932, the plaintiff, the National City Bank of New York, by its attorneys, Messrs. Ross,

Lawrence & Selph, filed a complaint, which reads as follows:

[CAPTION OMITTED]

COMPLAINT

Comes now the plaintiff and for cause of action against the defendant, as Collector of Internal Revenue of the Philippine Islands, alleges:

I

That it is and has been during all the times mentioned herein a national banking association organized and existing under the laws of the United States of America and duly authorized by the Federal Reserve Board of the United States of America and by the proper authorities of the Philippine Government to do business in the Philippine Islands and having its principal place of business therein at Manila; that the defendant is of lawful age, a resident of Manila, and is and has been during all the times mentioned herein the duly appointed, qualified and acting Collector of Internal Revenue of the Philippine Islands;

II

That on October 23, 1931, the Collector demanded and received from plaintiff the sum of seventy-seven thousand three hundred twenty-four pesos and eleven centavos (₱77,324.11), as deposit and capital taxes for the first half of the year 1931. That for the same period the Collector has demanded and received a return of income upon which income tax will be collected. That the Administrative Code of the Philippine Islands provides for the collection from all banks doing business in the Philippine Islands of deposit and cap-

ital taxes and Act 2833 as amended, provides for the collection of income taxes from all corporations and associations doing business in the Philippine Islands and deriving income therefrom. That under the *laws of the United States* national banks are instrumentalities of the United States of America upon which no taxes may be levied except as provided by the laws of the United States of America. The law of the United States of America permitting the taxation of national banks (section 548, United States Code, Annotated), reads as follows:

> "548. *States taxation.*—The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:
>
> "1. (*a*) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (*c*) of this clause.
>
> "(*b*) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citi-

zens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

"(*c*) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations, doing business within its limits: *Provided, however*, That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

"(*d*) In case the dividends derived from the said shares are taxed, the tax shall not be at a

greater rate than is assessed upon the net income from other moneyed capital.

"2. The shares of any national banking association owned by nonresidents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

"3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, of the same extent, according to its value, as other real property is taxed.

"4. The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section." (As amended March 25, 1926, c. 88, 44 Stat. 223.)

That there is no provision in the laws of the United States of America authorizing the Philippine Government to tax a national banking association both upon its capital and deposits and also impose an income tax upon its earnings;

III

That plaintiff paid said taxes involuntarily and under threat by the defendant of the exaction of pen-

alties, fines and forfeitures. That at the time of payment, plaintiff filed a protest reading as follows:

"The COLLECTOR OF INTERNAL REVENUE,
"Manila, P. I.

"DEAR SIR:

"We enclose our cheque for ₱77,324.11 in payment of Deposit and Capital Taxes for the period January/June, 1931.

"This payment is made under protest and duress and solely to avoid penalties, fines and forfeitures.

"The grounds of such protest are as follows:

"(1) That the National City Bank of New York is a national banking association duly organized under the United States National Banking Act and is an agency of the United States created under its laws to promote the fiscal policies of the United States.

"(2) That the National City Bank of New York has been duly authorized by the Federal Reserve Board to establish a branch in the Philippine Islands, and is now operating the same under the provisions of the United States Federal Reserve Act.

"(3) That no State, territory or possession of the United States or any subdivision thereof has the power to tax national banks except as Congress expressly permits; that no such power has been granted to the Philippine Government.

"(4) That under the provisions of the Na-

tional Banking Act (sec. 548, Title 12, U. S. Code) each State may tax national banking associations in any one of four forms but the imposition of any one of such forms shall be in lieu of the others except that in the case of a tax upon net income, individuals may be taxed upon dividends from national banking associations if the law of the State provides for such a tax upon all business corporations and dividends therefrom.

"(5) That the Philippine Islands imposes a tax upon net income and is therefore without power to impose any capital deposit, or other tax of any kind upon such national banking association."

IV

That plaintiff demanded the refund of the said sum of seventy-seven thousand three hundred twenty-four pesos and eleven centavos (₱77,324.11), but defendant overruled said protest and has refused to refund to plaintiff the said amount and no part thereof has been paid.

Wherefore, plaintiff prays for judgment against the defendant for the sum of seventy-seven thousand three hundred twenty-four pesos and eleven centavos (₱77,324.11) with interest thereon and costs of suit.

On July 7, 1932, the defendant, Juan Posadas, Jr., Collector of Internal Revenue of the Philippine Islands, by the then Attorney-General of the Philippine

Islands, filed an answer in the words and figures following:

[CAPTION OMITTED]

ANSWER

Comes now the defendant by the undersigned Attorney-General and in answer to plaintiff's complaint alleges:

That he denies generally and specifically each and every allegation contained in said complaint.

As special defense the defendant alleges:

1. That the sum of ₱77,324.11, referred to in paragraph II of the complaint, was collected from, and paid under protest by, the plaintiff on October 23, 1931, as taxes on capital and deposits, under the provisions of section 1499 of the Administrative Code, as amended by Act 3199.

2. That since the payment to the defendant of the above-mentioned amount up to the filing of the complaint in this case, the plaintiff has not made any demand on the defendant either to take action on its protest or to refund the said amount.

3. That at the time of the filing of the complaint in this case on June 7, 1932, the plaintiff had no cause of action against the defendant, for up to that time no action on its protest had been taken by the defendant and the period within which such action may be taken had not yet elapsed.

Wherefore, defendant prays this Honorable Court to dismiss the complaint filed in this case with costs to the plaintiff.

On August 28, 1933, this case was heard by the Court of First Instance of Manila, and in said hearing

the parties presented the following oral and documentary evidence:

ORAL EVIDENCE

[CAPTION OMITTED]

TRANSCRIPT

of the stenographic notes taken at the hearing of the above-entitled case before the Honorable Mariano A. Albert, Judge, on August 28, 1933, at 10 a. m.

APPEARANCES:

Attorneys James Ross and Robert Janda, of the law offices of Ross, Lawrence & Selph, for the plaintiff;

Assistant Attorney Felipe Natividad, of the Office of the Solicitor-General, for the defendant.

PRESENT:

Mr. Ildefonso Daria, Deputy Clerk of Court;
Mr. Jose Cruz Herrera, Interpreter;
Pablo Santiago, Stenographer.

EVIDENCE FOR THE PLAINTIFF

RICHARD E. SHAW, after first being duly sworn, testified as follows:

"DIRECT EXAMINATION BY MR. ROSS

"Q. Please state your name and other personal circumstances?

"A. Richard E. Shaw, 47 years old, married, banker, residing at 3–A, Meadowbrook Lane, Pasay, Rizal.

"Q. Mr. Shaw, what position do you occupy with the National City Bank of New York, Manila?

"A. I am Manager of the National City Bank of New York, Manila.

"Mr. Ross. For the convenience of the court, we submit a memorandum of the facts which we expect to prove in this case. (Same was handed over to the court.) We present a certified copy of the Articles of Incorporation of the National City Bank of New York, which we ask to be marked Exhibit A for identification.

"Q. Under what authority was the local branch of The National City Bank of New York established?

"A. It was established by virtue of the authorization given by the Federal Reserve Board.

"Mr. Ross. We present a certified copy of the order of the Federal Reserve Board granting permission to the National City Bank of New York to establish branches in Manila, Cebu, Philippine Islands, and we ask that it be marked Exhibit B for identification.

"Q. Mr. Shaw, will you state to the court what relation the Manila branch of the National City Bank of New York bears to the National City Bank of New York itself?

"A. The National City Bank of New York, in Manila, is not a separate organization, but it is an integral part of the National City Bank of New York, New York.

"Q. Does the Manila office of the National City Bank of New York have any capital stock

separate from that of the National City Bank of New York, in the City of New York?

"A. No, sir; no capital is allotted to the Manila branch of the National City Bank of New York.

"Mr. Ross. We present in evidence the document which we ask to be marked Exhibit C, for purposes of identification, the same being a certified copy of the By-Laws of the National City Bank of New York.

"Q. Showing to you, Mr. Shaw, the document which has been marked for identification as Exhibit D, and I ask you to state to the court what it is?

"A. This document is a consolidated balance sheet of all the branches of the National City Bank of New York, showing the conditions of the bank as of June 30, 1931.

"Q. Will you state to the court whether or not you receive those balance sheets from New York periodically?

"A. We do.

"Q. And do they form part of the records of the Manila branch of the National City Bank of New York?

"A. Copies are held in our records.

"Q. I ask you to state to the court, Mr. Shaw, under what authority do you act as manager of the Manila branch of the National City Bank of New York?

"A. By virtue of the power of attorney which was granted to me by the head office, in New York.

"Mr. Ross. We present as evidence the document which we ask to be marked for the purpose of identification as Exhibit E, the same being a certified copy of the power of attorney executed by the National City Bank of New York in favor of the witness, Mr. Richard E. Shaw.

"If Your Honor please, if there is no objection on the part of opposing counsel, we have here a certified copy of Exhibit E, which is a certified copy of the certificate issued by the Bureau of Commerce and Industry, and we would like to present this as a substitute for the original certificate.

"COURT. Any objection?

"Mr. Ross. We would like to substitute that for the official certificate, in order that Mr. Shaw may retain the official certificate in his office.

"Mr. NATIVIDAD. No objection, Your Honor.

"Mr. Ross. We ask that the notarial or certified copy be marked as Exhibit E, and I understand that we have the court's permission to withdraw the original certificate.

"Q. Will you please state to the court, Mr. Shaw, what supervision and inspection the head office of the National City Bank of New York exercise over the Manila branch?

"A. The President of the National City Bank of New York, New York, appoints vice-presidents, assistant cashiers, and other officers in New York, who are directly responsible for the activities of the Manila branch, and gives in-

structions by cable and by letters from time to time, and in addition to this a corps of inspectors makes periodical visits to this branch and examines all advances and everything pertaining to the business of the Manila branch of the National City Bank of New York.

"Q. Will you state to the court what supervision, visitation and examination, if any, are conducted by the Federal authorities with respect to the Manila branch of the National City Bank of New York?

"Mr. NATIVIDAD. Is there any provision in the by-laws of the bank dealing with the supervision of the local branch by the Federal authorities?

"WITNESS. Yes.

"Mr. ROSS. Q. Although it is not in the by-laws, it is done?

"A. Yes, it is done.

"The National Bank Examiner examines this branch from time to time. The last visit was made during the months of April and May, of 1932, by a National Bank Examiner by the name of Prickett.

"Q. How long did Mr. Prickett require to make this examination of the Manila branch of the National City Bank of New York?

"A. He arrived on the 4th of April, 1932, and completed his examination on May 9, 1932.

"Q. What can you say as to the extent and thoroughness of the examination and inspection made by the Federal National Bank Examiner, Mr. Prickett?

"A. He examined very carefully all advances, loans, overdrafts, and every matter of importance in the bank.

"Q. Please state to the court, Mr. Shaw, where and how the banking policies of the Manila branch of the National City Bank of New York are made or formulated?

"A. The policies governing the operations of the Manila branch of the National City Bank of New York are formulated in and dictated by our head office in New York.

"Q. Please state to the court how the banking operations of the Manila branch of the National City Bank of New York are carried on?

"A. These are carried on in accordance with our Articles of Incorporation and By-Laws, and are strictly limited by our head office.

"Q. Are those instructions followed strictly?

"A. Absolutely.

"Q. I notice in the order granting permission to the National City Bank of New York to establish branches in the Philippine Islands, Exhibit B, that Cebu is included, and I ask you to state to the court whether or not the methods of doing business,—examination, thorough inspection, etc.,—to which you have just testified, apply to the Cebu branch for the year 1931?

"A. Exactly the same rules and regulations apply to the Cebu branch of the National City

Bank of New York as to this branch at the present time.

"Mr. Ross. That is all."

"CROSS-EXAMINATION BY MR. TRINIDAD

"Q. If I remember correctly, Mr. Shaw, you stated that the local branch of the National City Bank of New York does not have a fixed capital and that the capital employed by the bank here is taken from the home office. Can you tell us the authorized capital of the National City Bank of New York in the head office?

"Mr. Ross. I might state for the information of the Solicitor-General and the court that that appears in Exhibit A, Articles of Incorporation, the original capital stock being $110,000,000.

"WITNESS. The original capital stock as indicated in that Exhibit A is $110,000,000, gold.

"Mr. NATIVIDAD. (Continuing.) Q. This is the capital of the National City Bank of New York in all its branches in the different parts of the world, is that right?

"A. Yes, sir.

"Q. Can you tell us, Mr. Shaw, if this capital has been exceeded by the National City Bank of New York?

"A. The capital has been altered from time to time. For instance, the capital as of June 30, 1933, is $124,000,000.

"Q. And that capital as of June 30, 1933, in the amount of $124,000,000 has been employed by the National City Bank of New York in all its activities throughout the world, is it not?

"A. Yes, sir.

"Q. Do you know what portion of that capital has been employed in the Philippine Islands?

"A. I could not say.

"Q. Can you tell us, Mr. Shaw, what kind of banking operations the local branch of the National City Bank of New York was engaged in the Philippine Islands?

"A. We engage in only those operations which are authorized under our Articles of Association and under our By-Laws, which again may be limited or changed under instructions from our head office.

"Q. Can you specify those banking operations in which the local branch of the National City Bank of New York is engaged?

"A. Buying and selling of foreign exchanges, the operation of current accounts, the selling of drafts on various parts of the world, savings department, and such other various activities as are authorized by our head office.

"Q. Does your bank engage in loaning money on real estates?

"A. It does, to a limited extent.

"Q. In other words, Mr. Shaw, the local branch of the National City Bank of New York is engaged in general banking business?

"A. Only such banking business as is permitted by our head office.

"Q. Can you state more or less how much yearly is allotted to your local branch here, to the branch of the National City Bank of New York in Manila, as capital?

"A. There is no such allotment of capital to the Manila Branch of the National City Bank of New York.

"Q. How do you run the bank, with what capital do you run the bank?

"A. We can secure loans or funds from our head office at any time it is needed. In case our local advances, loans, etc., exceed the amount of deposits, we can always borrow funds from our New York office in whatever amount may be required.

"Q. Up to what amount are you authorized to borrow?

"A. There is no limit set.

"Mr. NATIVIDAD. That is all."

"REDIRECT EXAMINATION BY MR. ROSS

"Q. Mr. Shaw, will you explain to the court a little more in detail what you meant by saying that the local branch of the National City Bank of New York borrows from the New York office. Please tell the court how those arrangements are carried out?

"A. We maintain running balances on our books. For instance, to go into the technicalities, the account of the Manila office in New York is called 'Manila Our Account,' and from time to time, as bills which are sent forward for collection mature, proceeds are collected by our head office and credited to that account.

They will thereby lay down funds in New York, from which we make drawings, cash telegraphic transfers, and issue drafts. As the total of the drawings exceed the amount which have been credited, then we go into the debit balance, and we are authorized to do that by our head office to whatever extent we need. For instance, we might maintain a credit balance with our New York office to the extent of five million dollars or seven million dollars, or on the other hand, the accounts might run into the debit balance. In other words, we might owe our New York office similar amounts.

"Mr. Ross. That is all."

JOAQUIN A. MONTENEGRO, after first being duly sworn, testified as follows:

"DIRECT EXAMINATION BY MR. JANDA

"Q. Please state your name and other personal circumstances?

"A. Joaquin A. Montenegro, 47 years old, married, Income Tax Examiner, Bureau of Internal Revenue, residing at 50 Riverside, San Juan del Monte, Rizal.

"Q. You were subpœnaed to bring to the court certain documents, did you bring them?

"A. I did.

"Q. Where are they?

"A. They are here (witness exhibiting certain documents).

"Mr. JANDA. I ask that this document be marked Exhibit F.

"Q. I show you this document marked Exhibit F, will you please explain what it is?

"A. This is a semi-annual statement of capital and deposits submitted by the National City Bank of New York, in Manila, upon which the payment of capital and deposit taxes was based.

"Q. For what period is that?

"A. For the period from January 1, 1931, to June 30, 1931.

"Q. I show you this document which is marked as Exhibit G, will you explain to the court what it is?

"A. This is the income tax return filed by the National City Bank of New York for the year 1931.

"Q. I show you this document which is marked Exhibit H, will you explain to the court what that is?

"A. This is the carbon copy of the official receipt for income tax paid by the National City Bank of New York upon the return submitted for the year 1931.

"Q. I show you this document which is marked Exhibit I, will you explain to the court what that is?

"A. This is the receipt for capital and deposit taxes paid by the National City Bank of New York for the period from January 1st to June 30, 1931.

"Q. I show you this document, marked Exhibit J, will you explain to the court what that is?

"A. This is the letter of the Manila branch of the National City Bank of New York, enclosing a check in payment of that statement Exhibit F, stating that the payment is made under protest and giving the reasons therefor.

"Mr. JANDA. That is all.

"Mr. NATIVIDAD. No cross-examination."

WILLIAM L. BULKELEY, after first being duly sworn, testified as follows:

"DIRECT EXAMINATION BY MR. JANDA

"Q. Please state your name, and other personal circumstances?

"A. William L. Bulkeley, 32 years old, married, Acting Accountant, National City Bank of New York, residing in Patio de Pasay, Pasay, Rizal.

"Q. I show you, Mr. Bulkeley, this document marked Exhibit F, inviting your attention to the figure 16,104.68, will you explain to the court what that figure is?

"A. This figure represents the capital tax paid by the Manila Branch of the National City Bank of New York for the period January to June 30, 1931.

"Q. Will you explain to the court the theory on which that figure was computed?

"A. The capital tax is computed in accordance with the provisions of the Administrative Code.

"Q. Will you give the court the detailed figures showing the computation of this particular figure for the year 1931?

"Mr. JANDA. I suggest, if counsel has no objection, that we introduce this sheet which explains that. It would save the time of the court and the parties herein.

"COURT. (To the witness.) Q. Have you prepared a computation?

"A. Yes, Your Honor, here is the computation.

"Mr. JANDA. Q. Will you explain these figures?

"COURT. It is not necessary. Just mark the computation as Exhibit K.

"Q. This computation was prepared by you, was it not?

"A. It was prepared under my supervision.

"Q. Have you examined this computation now?

"A. Yes, Your Honor.

"Q. Did you find it correct?

"A. Yes, Your Honor.

"COURT. Go ahead.

"Mr. JANDA. (Continuing with the witness.) Q. Go ahead.

"A. The capital of the Philippine branch is based upon the following proportion: The capital surplus and undivided profits of the corporation, is to X which is the unknown factor, as the entire corporation profits, is to the Philippine branch profits.

"Q. Before you proceed, you used the word "capital," when you used that word you merely meant an arbitrary figure, did you not?

"A. Yes.

"Q. You did not necessarily mean the capital that was actually employed in the Philippine Islands, did you?

"A. No.

"Q. It was not the capital that was employed, was it?

"A. It was not.

"Q. It was merely arbitrary?

"A. Yes. The total capital structure of the National City Bank of New York on December 31, 1930, was $224,554,298.54. The total corporation profits for the period ending June 30, 1931, were $10,690,303.41. The total Philippine branch profits were $151,851.11. To make up the proportion, the capital as of the beginning of January is taken, and to that is added the monthly average of the corporation profits for the six months, which amounted to $1,781,717.24. That is carried forward, giving the February capital. It is again added on to give the March capital. From the March capital is deducted the amount paid as dividends on March 31, 1931, or $4,510,000, then the average of $1,781,717.24, is again added to give the May capital, and again it is added to give the final capital in June. The various amounts representing the January, February, March, April, May, and June capital, as made up in this manner, are added together and divided by six to get the average capital employed by the institution. The average capital is then taken,

in the ratio as originally stated by me, to the entire corporation profits, as to the Philippine profits, and gives the total capital employed in the Philippine Islands, as outlined by the Administrative Code, or ₱6,441,872.28. The tax on this for the six months is one-fourth of 1 per cent or ₱16,104.68.

"Q. Mr. Shaw testified as to the inspections of the local branches of the National City Bank of New York periodically made by agents sent up by the Comptroller of Currency of the United States, is that right?

"A. That is correct.

"Q. Will you explain the nature of the inspections carried on by this official during his periodical visits?

"A. The last visit of the National Bank Examiner made in April, 1932, comprised a complete and thorough examination of the books of the branch.

"Q. What other supervision is exercised by the Federal Government over the local branch of the National City Bank of New York?

"A. We are required to make reports from time to time to the Comptroller of Currency at Washington, in accordance with the request made by him.

"Q. Was that report made for the period ending June 30, 1931?

"A. Yes, sir.

"Q. I show you this document marked Exhibit L, will you explain to the court what that is?

"A. This is a report made to the Comptroller of Currency, in accordance with his request, as of the close of business on June 30, 1931.

"Q. I notice that this is made on a printed form, who prepares this form?

"A. These forms are received by us from our New York office, who in turn received them from the Treasury Department, in Washington, D. C.

"Q. In other words, the forms printed by the Bureau of Printing, Washington, D. C.?

"A. Yes, sir.

"Q. How frequently are these reports made?

"A. The Comptroller of Currency, Washington, D. C., is required by law to request each national bank to make a report of its condition at least three times a year. For the past two years, it has been in the habit of calling for such a report once every three months.

"Q. Will you explain to the court the nature of the report made?

"A. The report made consisted of a general balance sheet, of the resources and liabilities, supported by various schedules, breaking down the items given in the general balance sheet into the required subdivisions.

"Q. You said 'breaking down,' will you explain to the court the meaning of that?

"A. For example, if item No. 1 under resources is loans and discounts, it is stated that it must agree with schedule E in the report. If you refer to schedule E, you will see that they

wish this amount made up in these varios subdivisions. That is what I meant by 'breaking down.'

"Q. Does the National City Bank of New York, in Manila, ever hear further from these reports turned in?

"A. No, it does not hear any further from these particular reports, unless there are some items to be criticized.

"Q. What is the source of these criticisms?

"A. The various loans, for example, are reported to the New York office and details examined by the national banking authorities. Such loans as they may consider subject to criticisms are again referred to us for further details, which we furnish.

"Q. Did the National City Bank of New York pay income tax for the year 1931?

"A. Yes, sir.

"Q. Did the National City Bank of New York pay capital and deposit taxes for the year 1931?

"A. Yes, sir.

"Q. Was this tax paid under protest?

"A. The capital and deposit taxes for the period January to June 30, 1931, was paid under protest.

"Q. Can you give the approximate amount of capital and deposit taxes paid by the National City Bank of New York for the period from January 1, 1931, to June 30, 1931?

"Mr. NATIVIDAD. That amount appears in the statement, does it not?

"Mr. ROSS. For the convenience of the court, the approximate amount is P77,000.

"Mr. JANDA. That is all."

"CROSS-EXAMINATION BY MR. NATIVIDAD

"Q. These periodical examinations of your accounts here, which you have referred to in the course of your direct testimony, were made by the officials of the National City Bank of New York, were they not?

"A. I don't believe I understand the question.

"Q. You have just stated in the course of your testimony that periodically your accounts and books here are examined; those examinations were made by the officials of the Central office, were they not?

"A. The statement I made was to the effect that the books were examined by a national bank examiner.

"Q. And the national bank examiner was responsible to your head office, was he not?

"A. No, he was responsible to the Comptroller of Currency, Washington, D. C.

"Q. As an official of the U. S. Government?

"A. Yes, sir.

"Q. In the computation of the capital of the local branch of the National City Bank of New York, which you made for the purpose of com-

plying with the requirements of the law here about the payment of taxes on deposits and capitals, did you include the assets of the International Banking Corporation which was acquired by the National City Bank of New York?

"A. All the assets of the International Banking Corporation were taken over by the National City Bank of New York and the same were incorporated in the assets of the National City Bank of New York.

"Q. Your total must include also the assets of the International Banking Corporation, must it not?

"A. The International Banking Corporation has no assets in the Philippine Islands at the present time.

"Q. But it has pending banking transactions, has it not?

"A. Those were taken over by the National City Bank of New York.

"Q. Is it not a fact that the local branch of the National City Bank of New York continues to do business with the International Banking Corporation?

"A. The International Banking Corporation is still in existence but for the use of certain trusts which could not be transferred to the National City Bank of New York.

"Q. Were you connected with the International Banking Corporation prior to its acquisition by the National City Bank of New York?

"A. Not in Manila.

"Q. Where?

"A. Barcelona, Spain.

"Mr. NATIVIDAD. That is all."

"REDIRECT EXAMINATION BY MR. ROSS

"Q. Do you know the date on which the assets of the International Banking Corporation were taken over by the National City Bank of New York?

"A. As of the close of business on March 26, 1930.

"Mr. ROSS. That is all. We offer in evidence the documents which are marked as Exhibits A to L, inclusive, with the understanding heretofore entered into as to the substitution of certified copies for certain documents placed in evidence by the representative of the Collector of Internal Revenue, which are Exhibits F to J, inclusive.

"COURT. Any objection?

"Mr. NATIVIDAD. No objection as to the admission of Exhibits A, B, C, and D, if Exhibit D is presented as part of the testimony of Mr. Shaw.

"Mr. ROSS. It is so presented.

"Mr. NATIVIDAD. No objection as to Exhibits E, F, G, H, I, J, and K, if Exhibit K was pre-

sented as part of the testimony of the witness Mr. Bulkeley?

"Mr. ROSS. It is so presented.

"COURT. Exhibits A to L, inclusive, are admitted in evidence.

"Mr. ROSS. That is all, Your Honor. We submit the case.

"Mr. NATIVIDAD. We have no evidence to present.

"COURT. The plaintiff is given five days within which to submit a memorandum, and the Solicitor-General ten days within which to make a reply, reserving the right to the plaintiff to file a reply to the memorandum of the Solicitor-General."

For the transcript:

(Sgd.) PABLO SANTIAGO
Stenographer

DOCUMENTARY EVIDENCE

Exhibit A

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF AGRICULTURE AND COMMERCE
BUREAU OF COMMERCE
MERCANTILE REGISTER

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

This is to certify That the annexed is a true and complete transcript of the Articles of Incorporation of

The National City Bank of New York which were duly filed with the Mercantile Register of the Bureau of Commerce on the 19th day of March, *Anno Domini* nineteen hundred and thirty.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the said Register to be affixed at Manila, this nineteenth day of July, *Anno Domini* nineteen hundred and thirty-three.

(SEAL.) (Sgd.) TOMAS CONFESOR
Director

No. 390

UNITED STATES OF AMERICA

[SEAL]

DEPARTMENT OF STATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I CERTIFY That the document hereunto annexed is under the Seal of the Treasury Department,

IN TESTIMONY WHEREOF, I, Henry L. Stimson, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, in the District of Columbia, this twentieth day of January, 1930.

(Sgd.) HENRY L. STIMSON
Secretary of State

By (Sgd.) E. JAYERS
Chief Clerk

(SEAL.)

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
WASHINGTON, D. C.

JANUARY 18, 1930

Pursuant to section 882 of the Revised Statutes of the United States of America, I hereby certify that the signature of F. G. Awalt as Acting Comptroller of the Currency, to the paper dated January 18, 1930 hereto attached, is his genuine signature, and that the seal of the Office of the Comptroller of the Currency affixed thereto in attestation thereof is the official seal of the Comptroller of the Currency.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary:

(Sgd.) S. LOWMAN
Assistant Secretary of the Treasury

(SEAL.)

CERTIFICATE FOR CERTIFIED COPY

TREASURY DEPARTMENT
OFFICE OF THE
COMPTROLLER OF THE CURRENCY } *ss.*

Under the provisions of Section 884 of the Revised Statutes of the United States, I F. G. Awalt, Acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original Articles of Association of The National

City Bank of New York, N. Y., as amended January 10, 1928, and June 29, 1929.
and of the whole of such original and amendments on file and of record in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this 18th day of January, A. D. 1920.

(Sgd.) F. G. AWALT
Acting Comptroller of the Currency

(SEAL.)

ARTICLES OF ASSOCIATION

We the undersigned, the Directors of The City Bank of New York, located in the City and County of New York in the State of New York, having been authorized by the owners of two-thirds of the Capital Stock of said Bank to change and convert the said Bank into a National Bank to change and convert the said Bank into a National Banking Association, under and according to the provisions of the Act of Congress entitled "An Act to provide a National Currency secured by a pledge of United States Bonds and to provide for the circulation and redemption thereof," approved June 3, 1864, and to execute Articles of Association, do hereby in our own behalf and in behalf of the stockholders whom we represent, make and execute the following Articles of Association:

FIRST. The name and title of the Association into which the said The City Bank of New York is to be changed and converted shall be The National City Bank of New York.

SECOND. (As Amended June 29, 1929.) The place where its banking houses and offices shall be located and its operations of discount and deposit carried on, and its general business conducted, shall be in the City of New York, State of New York, its Head Office being at No. 55 Wall Street, in the Borough of Manhattan, City and County of New York, with branches at the following locations:

BOROUGH OF MANHATTAN

17 East 42nd Street
250 Fifth Avenue
330 Bowery

BOROUGH OF BROOKLYN

181–183 Montague Street
556 Nostrand Avenue
418 Myrtle Avenue
1455 Myrtle Avenue
1501 Kings Highway
138 Pennsylvania Avenue
6319–6321 Eighteenth Avenue
5324 Fifth Avenue
230 Flatbush Avenue
885 Flatbush Avenue
8500 Fourth Avenue

The Board of Directors shall have power to change the location of the said Head Office and to discontinue or change the location of any of the said domestic branches, from time to time, in any manner not inconsistent with law, without action by the shareholders provided that none of said branches shall be removed to any place beyond the limits of the City of New York.

THIRD. (As Amended June 29, 1929.) The Board of Directors shall consist of not less than seven nor more than twenty-nine shareholders.

The Regular Annual Meeting for the election of Directors and the transaction of whatever other busi-

ness may be brought before said meeting shall be held on the second Tuesday of January of each year, but if no election shall be held on that day, it may be held on any other day, according to the provisions of the Tenth Section of the Act; and all elections shall be held according to such regulations as may be prescribed by the Board of Directors of the Association, not inconsistent with the provisions of the aforesaid Act.

FOURTH. (As amended June 29, 1929.) The capital stock of this Association shall be $110,000,000, to be divided into 5,500,000 shares of $20 each.

FIFTH. The Board of Directors (a majority of whom shall be a quorum to do business) shall elect one of their number to be President of this Association who shall hold his office (unless he shall become disqualified or be sooner removed by a two-thirds vote of all the members of the Board) for the term for which he was elected a Director; and they shall have power to elect a Vice-President who shall also be a member of the Board of Directors, and to elect or appoint a Cashier and such other officers and clerks as may be required to transact the business of the Association; to fix the salaries to be paid to them and continue them in office or to dismiss them as, in the opinion of a majority of the Board, the interests of the Association may demand.

They shall also have power to define the duties of the officers and clerks of the Association, to require bonds, from them and to fix the penalty thereof; to regulate the manner in which elections of Directors shall be held, and to appoint judges of the elections; to provide for an increase of the capital of the Asso-

ciation, and to regulate the manner in which such increase shall be made; and generally to do and perform all the acts that it may be legal for a Board of Directors to do under the Act aforesaid; and they shall also have the power to make all By-Laws that it may be proper and convenient for them to make under said Act, for the general regulation of the business of the Association and the entire management and administration of its affairs; which By-Laws may prohibit, if the Directors shall so determine, the transfer of stock owned by any stockholder who may be liable to this Association, either as principal debtor or otherwise, without the consent of the Board.

SIXTH. (As amended Jan. 10, 1928.) This Assotion shall have succession from the date of its organization certificate until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

SEVENTH. These Articles of Association may be changed or amended at any time by stockholders owning a majority of the stock of the Association, in any manner not inconsistent with the provisions of the Act, and the Board of Directors or any three stockholders may call a meeting of the stockholders for this purpose.

IN WITNESS WHEREOF we, the Directors aforesaid, for ouselves as such Directors and in behalf of the

stockholders of The City Bank of New York have hereunto set our hands this fifth day of July, 1865.

MOSES TAYLOR
TARRANT PUTNAM
J. H. BROWER
LOUIS A. VON HOFFMANN
GEORGE GREER
JOHN ALSTYNE
HENRY PARISH
JOHN J. CISCO
JOHN J. PHELPS

UNITED STATES OF AMERICA
STATE OF NEW YORK } *ss.*
CITY AND COUNTY OF NEW YORK

On this fifth day of July in the year of our Lord one thousand eight hundred and sixty five personally came before me a notary public in and for the State of New York, Moses Taylor, Tarrant Putnan, John H. Brower, John J. Cisco, Louis A. von Hoffmann, George Greer, John Alstyne, John J. Phelps, and Henry Parish, directors of The City Bank of New York, to me well known, who severally acknowledged that they executed the foregoing Articles of Association for the purposes therein mentioned.

Witness my hand and seal of Office the day and year aforesaid.

WM. WALTER PHELPS
Notary Public
County of New York

(SEAL.)

I certify that the Articles of Association of The National City Bank of New York were executed in du-

plicate and that one of the instruments so executed is the foregoing, and that the other in all respects like the foregoing and stamped in the same manner is on file with said bank.

Dated New York, July 5th, 1865.

MOSES TAYLOR
President

UNITED STATES OF AMERICA
STATE OF NEW YORK } *ss.*
COUNTY OF NEW YORK

NATHAN C. LENFESTEY, being first duly sworn, deposes and says:

That he is the Cashier of The National City Bank of New York, a National Banking Association, organized and existing under the laws of the United States of America, and having its Head Office at No. 55 Wall Street, Borough of Manhattan, City, County and State of New York;

That, as such cashier, he has charge of the books and accounts of the said Bank;

That the subjoined Condensed Statement of Condition of The National City Bank of New York, including Domestic and Foreign offices, as of December 31, 1929, is true and correct.

(Sgd.) NATHAN C. LENFESTEY

Subscribed and sworn to before me this 28th day of January, 1930.

(Sgd.) CLARA E. VAN EMDEN
Notary Public, New York County
N. Y. Co. Clks. No. 10, Reg. No. 0–53
Commission expires March 30, 1930

STATE OF NEW YORK }
COUNTY OF NEW YORK }

No. 5869, Series C

I, Daniel E. Finn, Clerk of the County of New York, and also Clerk of the Supreme Court for the said county, the same being a Court of Record, having a seal, do hereby certify, that

CLARA E. VAN EMDEN

whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 6th day of February, 1930.

(Sgd.) DANIEL E. FINN
Clerk

Exhibit B

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF AGRICULTURE AND COMMERCE
BUREAU OF COMMERCE
MERCANTILE REGISTER

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

This is to certify that the annexed is a true and complete transcript of the Order granting permission to "The National City Bank of New York," to establish branches in Manila and Cebu, Philippine Islands, which were duly filed with the Mercantile Register of the Bureau of Commerce on the 19th day of March, *Anno Domini* nineteen hundred and thirty.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the said Register to be affixed, at Manila, this 26th day of August, *Anno Domini* nineteen hundred and thirty-three.

(Sgd.) TOMAS CONFESOR
Director

(SEAL.)

UNITED STATES OF AMERICA
STATE OF NEW YORK } *ss.*
COUNTY OF NEW YORK

I, Clara E. van Emden, a notary public in and for the County of New York, State of New York, United States of America, do hereby certify that I have compared the copies attached hereto with the original copy

of an Order issued by the Federal Reserve Board, Washington, D. C., under date of January 23, 1930, and the original authentication attached thereto by the Department of State, Washington, D. C., under date of January 24, 1930, and that the same are true and exact copies thereof. I further certify that the original of the said Order and the authentication by the Department of State are on file with the Cashier of The National City Bank of New York, at its head office, No. 55 Wall Street, Borough of Manhattan, City, County and State of New York.

Given under my hand and official seal this 28th day of January, 1930.

(Sgd.) CLARA E. VAN EMDEN
Notary Public, New York County
N. Y. Co. Clks. No. 10, Reg. 0
Commission expires March 30, 1930

(SEAL.)

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.*

No. 5875, Series C

I, Daniel E. Finn, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, having a seal, do hereby certify, that

CLARA E. VAN EMDEN

whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment,

a notary public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 6 day of Feb., 1930.

(Sgd.) DANIEL E. FINN
Clerk

No. 474

UNITED STATES OF AMERICA

(THE GREAT SEAL OF THE UNITED STATES)

DEPARTMENT OF STATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I CERTIFY that the document hereunto annexed is under the Seal of the Federal Reserve Board.

IN TESTIMONY WHEREOF, I, Henry L. Stimson, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at

the City of Washington, in the District of Columbia, this twenty-fourth day of January, 1930.

(Sgd.) HENRY L. STIMSON
Secretary of State

By E. JAYERS
Chief Clerk

(Department of State Official Seal.)

Present:

Hon. R. A. Young, Governor,
Hon. Chas. S. Hamlin,
Hon. A. C. Miller,
Hon. E. H. Cunningham,
Hon. J. W. Pole,
Mr. E. M. McCleland, Asst. Secretary

At a stated meeting of the Federal Reserve Board, held at its office in the City of Washington, District of Columbia, on January 23, 1930.

IN THE MATTER OF THE APPLICATION OF THE NATIONAL CITY BANK OF NEW YORK for permission to establish Branches in Manila and Cebu, each in the Philippine Islands.

ORDER GRANTING PERMISSION TO ESTABLISH BRANCHES IN MANILA AND CEBU, PHILIPPINE ISLANDS

The National City Bank of New York, having on or about January 3, 1930, filed an application with this Board for the purpose of obtaining authority to establish branches in Manila and Cebu, Philippine Islands, and the said Application having been considered; and it appearing that the said Application is properly

made under the laws of the United States of America and should be granted, Now,

"Ordered, that the said application be and it hereby is approved, and that the said Bank be and it hereby is authorized to establish Branches in Manila and Cebu, Philippine Islands.

THE FEDERAL RESERVE BOARD:

(Sgd.) R. A. YOUNG
Governor

Attest:

E. M. MCCLELAND
Assistant Secretary

Exhibit C

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF AGRICULTURE AND COMMERCE
BUREAU OF COMMERCE
MERCANTILE REGISTER

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

THIS IS TO CERTIFY that the annexed is a true and complete transcript of the By-Laws of The National City Bank of New York which were duly filed with the Mercantile Register of the Bureau of Commerce on the 19th day of March, *Anno Domini* nineteen hundred and thirty.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the said Register to be

affixed at Manila, this nineteenth day of July, *Anno Domini* nineteen hundred and thirty-three.

(Sgd.) TOMAS CONFESOR
Director

(SEAL.)

THE NATIONAL CITY BANK OF NEW YORK

BY-LAWS

ARTICLE I

MEETINGS OF SHAREHOLDERS

SECTION 1. *Annual meeting.*—The regular annual meeting of the shareholders, for the election of directors and the transaction of such other business as may come before the meeting, shall be held at the Head Office of the Association, No. 55 Wall Street, Borough of Manhattan, City of New York, at 12 o'clock noon, on the second Tuesday in January in each year. Notice of such meeting shall be mailed, postage prepaid, at least thirty days prior to the date thereof, addressed to each shareholder at his address appearing on the books of the Association; but any failure to mail such notice, or any irregularity therein, shall not affect the validity of such meeting or of any of the proceedings thereat. If, from any cause, an election of directors is not made on the said day, the Board of Directors shall order the election to be held on some subsequent day, as soon thereafter as practicable; and notice thereof shall be given in the manner herein provided for the annual meeting, and, in addition thereto, thirty days' prior notice thereof shall be given by publication in a newspaper published in the City and County of New York.

SEC. 2. *Special meetings.*—The Cashier shall call a special meeting of the shareholders, at any time, upon the order of the Board of Directors or of the President or other officer for the time being acting as President; and he shall also call a special meeting whenever requested in writing by the registered holders of not less than forty per cent of the outstanding capital stock. Unless otherwise required by law, notice of any such special meeting shall be sufficiently given, if mailed, postage prepaid, not less than ten days before the meeting, to each shareholder at his address appearing on the books of the Association.

SEC. 3. *Judges of election.*—Every election of directors shall be managed by three judges, who shall be appointed from among the shareholders by the Board of Directors. The judges of election shall hold and conduct the election at which they are appointed to serve; and, after the election, they shall file with the Cashier a certificate under their hands, certifying the result thereof and the names of the directors elected.

SEC. 4. *Quorum.*—A majority of the outstanding capital stock, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders, unless otherwise provided by law; but less than a quorum may adjourn any meeting, from time to time, and the meeting may be held, as adjourned, without further notice. A majority of the votes cast shall decide every question or matter submitted to the shareholders at any meeting, unless otherwise provided by law.

ARTICLE II

DIRECTORS

SECTION 1. *Number.*—All corporate powers shall be vested in and exercised by a Board of Directors com-

posed of not less than seven nor more than twenty-nine members; and the number of Directors to be elected each year at the Annual Meeting of shareholders shall be determined by vote of the shareholders at such meeting.

SEC. 2. *Organization meeting.*—The Cashier, upon receiving the certificate of the judges, of the result of any election, shall notify the directors-elect of their election and of the time at which they are required to meet at the Head Office of the Association for the purpose of organizing the new Board and electing and appointing officers of the Association for the succeeding year. Such meeting shall be appointed to be held on the day of the election or as soon thereafter as practicable, and, in any event, within thirty days thereof. If, at the time fixed for such meeting, there shall not be a quorum present, the directors present may adjourn the meeting, from time to time, until a quorum is obtained.

SEC. 3. *Regular meetings.*—The Board of Directors shall hold a regular meeting, without notice, on Tuesday in each week, at 1.30 o'clock p. m., at the Head Office of the Association. Should the day appointed for a regular meeting fall on a legal holiday, the meeting shall be held at the same time on the next day not a legal holiday or on such other day as the Board may have ordered at the next previous meeting.

SEC. 4. *Special meeting.*—A special meeting of the Board of Directors may be called at any time by the Chairman or the President; and such meeting shall be called by either of said officers, or by the Cashier, on the written request of any three members of the Board. Notice of any special meeting may be given in writing, either by mailing or telegraphing the same

to each director, at his address appearing on the books of the Association on or before the second day preceding the meeting, or by delivering the same to him personally on or before the day preceding the meeting or by leaving the same at his place of business in the City of New York, before 5 o'clock, p. m., or at his residence in the said city before 9 o'clock, p. m., on the day preceding the meeting; provided, that if any director has neither a place of business nor a residence in the City of New York, such notice may be sent by telegraph at any time during the day preceding the meeting, to his address appearing on the books of the Association.

SEC. 5. *Quorum.*—A majority of the directors shall constitute a quorum at any meeting, except when otherwise provided by law; but a less number may adjourn any meeting, from time to time, and the meeting may be held, as adjourned, without further notice.

SEC. 6. *Vacancies.*—When any vacancy occurs among the directors, the remaining members of the Board may appoint a director to fill such vacancy at any regular meeting of the Board, or at a special meeting called for that purpose.

SEC. 7. *Directors' fees.*—A fee of $50 shall be paid to each Director for attendance at any meeting of the Board of Directors or of any Committee of said Board.

ARTICLE III

COMMITTEES OF THE BOARD

SECTION 1. *Executive Committee; Powers.*—There shall be an Executive Committee of the Board of Directors, to be appointed by the Board of Directors from time to time, and to hold office during its pleas-

ure. The Executive Committee shall have and may exercise, when the Board of Directors is not in session, all the powers of the Board that may lawfully be delegated. The Executive Committee may make rules for holding and conducting its meetings, and shall keep minutes thereof. Such minutes shall be submitted at the next regular meeting of the Board of Directors, and any action taken by the Board with respect thereto shall be entered in the minutes of the Board. All acts done and powers conferred by the Committee from time to time shall be deemed to be, and may be certified as being, done or conferred under authority of the Board.

SEC. 2. *Executive Committee; Membership.*—The Executive Committee shall be composed of five permanent members, who shall be the Chairman and the President, both ex officio, and three other members appointed by the Board, and of four additional members who shall be designated by the Chairman from time to time from among the other Directors in rotation as herein provided. Such additional members shall serve for terms of twelve weeks each, or until the earlier expiration of their respective terms as Directors, except that the four additional members first designated in any year shall serve for terms of three, six, nine and twelve weeks, respectively. The Chairman, or, in his absence, the President, shall have power to designate another Director to serve during the absence of any permanent or additional member of the Committee, and for that purpose, and also for the purpose of maintaining continuity between an outgoing and an incoming committee, or for other reason deemed by him sufficient, to vary the regular order of rotation.

Three members of the Committee shall constitute a quorum at any meeting.

SEC. 3. *Examining Committee.*—There shall be an Examining Committee composed of not less than five members of the Board of Directors, to be appointed by the Board every six months, or oftener in its discretion, and to hold office during its pleasure. It shall be the duty of the Examining Committee to examine into the affairs of the Association, and to compare its assets and liabilities with the balances of the general ledger, for the purpose of ascertaining whether or not the books are correctly kept and the actual condition of the Association corresponds therewith, and whether or not the Association is in a sound and solvent condition; and the result of any such examination shall be reported to the Board of Directors and spread on the minutes at the next regular meeting of the Board thereafter.

SEC. 4. *Other committees.*—The Board of Directors may appoint, from time to time, from its own members, other committees of one or more persons, for such purposes and with such powers as the Board may determine.

ARTICLE IV

OFFICERS AND AGENTS

SECTION 1. *Officers.*—The officers of the Association to be elected or appointed by the Board of Directors shall be a Chairman and a President, each of whom shall be a Director, one or more Senior Vice-Presidents, one or more Vice-Presidents, a cashier, a comptroller, one or more Assistant Vice-Presidents, one or more Trust Officers, one or more Executive Assistants, one

or more Assistant Comptrollers, Assistant Trust Officers and Assistant Cashiers, one or more Managers and Assistant Managers of Domestic Branches and Offices, one or more Managers, Sub-Managers and Agents in charge of, and one or more Supervisors and Assistant Supervisors of, Foreign Branches, and such other officers and attorney-in-fact as from time to time may appear to the Board of Directors to be required or desirable for the conduct of the affairs of the Association.

SEC. 2. *Clerks and agents.*—The Board of Directors may appoint, from time to time, such Paying Tellers, Receiving Tellers, Note Tellers, Bookkeepers and other clerks, agents and employees as it may deem advisable for the prompt and orderly transaction of the business of the Association and may prescribe the duties of each, subject to the provisions of these By-Laws; and it may delegate to the President, or to any other officer of the Association, authority to appoint and dismiss such clerks, agents and employees and to prescribe their duties.

SEC. 3. *Term of office.*—The Chairman and the President shall each hold office (unless he shall become disqualified or be sooner removed by a two-thirds vote of all the members of the Board) for the term for which he was elected a director. All other officers, clerks, agents and employees elected or appointed by the Board of Directors, or under its authority, shall hold office at the pleasure of the Board.

SEC. 4. *Powers and duties of Chairman.*—Except as otherwise provided by law, the Chairman shall be the chief executive officer of the Association and shall have and may exercise any and all powers and perform any and all duties pertaining to the office of President,

or conferred or imposed upon the President under these By-Laws. He shall be ex officio Chairman of the Board of Directors and of the Executive Committee and shall preside at all meetings of the Board of said Committee. He shall have such other powers and duties as may from time to time be assigned to him by the Board of Directors or by said Committee.

SEC. 5. *Powers and duties of President.*—In the absence or disability of the Chairman, the President shall have the powers and perform the duties of the Chairman. He shall also have and may exercise any and all powers and perform any and all duties pertaining to the office of President, or conferred or imposed upon the President by these By-Laws or by statute. He shall have such other powers and duties as may from time to time be assigned to him by the Board of Directors or the Executive Committee or the Chairman. He shall be a member of the Executive Committee ex officio.

SEC. 6. *Powers and duties of Senior Vice-Presidents.*—Each of the Senior Vice-Presidents shall, in the absence of the President, have full authority to exercise all the powers and perform all the duties of the President.

SEC. 7. *Powers and duties of the Cashier.*—The Cashier shall be the Secretary of the Board of Directors, shall keep accurate minutes of all meetings of the shareholders and of the Board, and shall attend to the giving of all notices required by these By-Laws to be given, except as herein otherwise provided. He shall be responsible for all moneys, funds and valuables of the Association, and shall be the custodian of the corporate seal, records, documents and papers of the Association, unless otherwise provided by these By-

Laws or by the Board of Directors. It shall be his duty to provide for the keeping of proper records of all transactions of the Association; to report to the Board of Directors at each regular meeting the condition of the Association as shown by the daily statement at the close of business on the preceding day; to submit to the Board of Directors or the Executive Committee, when requested, a detailed statement of the expenses of the Association; and to perform such other duties as may be assigned to him, from time to time, by the Board of Directors or the Executive Committee. He shall maintain strict discipline and observe carefully the conduct of all persons employed under him, and report to the President promptly such evidence of incapacity or bad conduct as he may observe.

SEC. 8. *Powers and duties of other officers.*—All other officers shall respectively exercise such powers and perform such duties as pertain to their several offices and as the Board of Directors shall, from time to time, prescribe.

ARTICLE V

DOMESTIC BRANCHES AND OFFICES

SECTION 1. *Location.*—The Board of Directors shall have power to discontinue or to change the location of any domestic branch or office, from time to time, in any manner not inconsistent with law, without action by the shareholders.

SEC. 2. *Management.*—The affairs of such domestic branches and offices shall be under the immediate supervision and control of the President; and the President is authorized, with the approval of the Board of Directors or Executive Committee, to designate such

Vice-Presidents, Assistant Vice-Presidents, Assistant Cashiers, Managers, Assistant Managers, Trust Officers, Assistant Trust Officers, and such other officers as he may deem necessary, to conduct the business of such branches and other offices, subject to such rules and regulations as the President shall promulgate from time to time. With like approval of the Board of Directors or the Executive Committee, the President may also cause such powers of attorney to be given to such persons as he may deem necessary for the proper conduct of the business of the said several domestic branches and offices; and he may at any time revoke any powers of attorney so given.

SEC. 3. *Advisory Committees.*—The Board of Directors may appoint an Advisory Committee for any domestic branch or office of the Association, the members of which need not be directors, officers or stockholders, and shall hold office subject to the pleasure of the Board. Any such Committee shall act in an advisory capacity with respect to the branch or office for which it shall have been appointed, subject to such regulations as may from time to time be prescribed by the Board of Directors. The members of any such Advisory Committee shall receive such fees for attendance at meetings thereof as may be prescribed by the Board of Directors.

ARTICLE VI

FOREIGN BRANCHES

SECTION 1. *Establishment.*—The Board of Directors is authorized to establish branches in foreign countries and in dependencies of the United States of America, subject to the approval of the Federal Reserve Board.

SEC. 2. *Management.*—The affairs of such foreign branches shall be under the immediate supervision and control of the President; and the President is authorized, with the approval of the Board of Directors or Executive Committee, to designate such Vice-Presidents, Assistant Vice-Presidents, Assistant Cashiers, Supervisors, Assistant Supervisors, Managers, Sub-Managers, Trust Officers, Assistant Trust Officers, and such other officers or agents as he may deem necessary, to conduct the business of such foreign branches, subject to such rules and regulations as the President shall promulgate from time to time. With like approval of the Board of Directors or the Executive Committee, the President may also cause such powers of attorney to be given to such persons as he may deem necessary for the proper conduct of the business of the said several foreign branches; and he may at any time revoke any powers of attorney so given.

SEC. 3. *Custody of funds.*—The funds of each branch shall be kept in the custody of the officer, manager, or other agent in charge thereof, or in such depositories as he may select, subject to the approval of the President or such other officer as he may designate.

SEC. 4. *Books and reports.*—At each branch, the officer, manager or other agent in charge thereof shall keep or cause to be kept, full and regular books of account, which shall at all times be open to inspection by the Association, through its proper officers or accountants or by the proper officers of the Government of the United States of America. All the transactions of the Association at the several branches shall be reported promptly to the Association by the officer, manager or other agent in charge thereof.

ARTICLE VII

TRUST DEPARTMENT

SECTION 1. *Exercise of fiduciary powers.*—All fiduciary powers of the Association shall be exercised through the Trust Department, subject to such regulations as the Federal Reserve Board shall from time to time establish. All the books and records of the Trust Department shall be kept separate and distinct from the other books and records of the Association.

SEC. 2. *Officer in charge.*—The Board of Directors shall appoint a Vice-President who shall have charge of all the operations of the Trust Department. He shall make weekly reports in writing to the Executive Committee of all important transactions of the Trust Department and especially of all sales and purchases of investment securities for trust estates.

SEC. 3. *Trust Officers.*—The Board of Directors may appoint, from time to time, one or more Trust Officers and one or more Assistant Trust Officers, who shall exercise such powers and perform such duties as are prescribed in these By-Laws or as may be assigned to them by the Board of Directors or by the President or by the Vice-President in charge of the Trust Department.

SEC. 4. *Execution of instruments.*—All agreements, indentures, mortgages, deeds, conveyances, transfers, certificates, declarations, receipts, discharges, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, proxies and other instruments or documents in connection with the exercise of any of the fiduciary powers of the Association,

may be signed, executed, acknowledged, verified, delivered or accepted in behalf of the Association by the President or any Vice-President, or any Trust Officer, and the seal of the Association may be affixed thereto and attested by the Cashier or any Assistant Cashier.

SEC. 5. *Authentication and signature of instruments.*—All authentications or certificates by the Association, as Trustee under any mortgage, deed of trust or other instrument securing bonds, debentures, notes, or other obligations of any corporation and all certificates as Register or Transfer Agent and all certificates of deposit for stocks and bonds, and interim certificates and trust certificates, may be signed or countersigned in behalf of the Association by the President or any Vice-President or Assistant Vice-President, or by the Cashier or any Assistant Cashier, or by any Trust Officer or any Assistant Trust Officer, or by any other person appointed by the Board of Directors.

SEC. 6. *Securities and investments.*—The securities and investments held in each trust shall be kept separate and distinct from the securities owned by the Association, and separate and distinct from those of any other trust. Trust securities and investments shall be held in the custody of two or more officers or other employees designated by the Board of Directors from time to time.

SEC. 7. *Trust Committee.*—There shall be Trust Committee composed of not less than three members of the Board of Directors appointed by the Board to serve during its pleasure. The Trust Committee shall review periodically all investments of trust funds held by the Trust Department, and shall approve the classes

of securities in which trust funds, held under discretionary powers of investment, may be invested. The Trust Committee shall have such other powers and duties with respect to the investment of trust funds as may be conferred upon it by the Board of Directors. It shall meet at least once a month, and its members shall be entitled to receive for attendance at any meeting such fee or compensation as may be fixed by the Board of Directors or Executive Committee.

ARTICLE VIII

STOCK AND STOCK CERTIFICATES

SECTION 1. *Transfers.*—Shares of stock shall be transferable on the books of the Association, and a transfer book shall be kept in which all transfers of stock shall be recorded. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all rights and liabilities of the prior holder of such shares. No stock shall be voted at any election which shall have been transferred within fifteen days prior to such election.

SEC. 2. *Stock certificates.*—Certificates of stock shall bear the engraved signature of the Chairman or of the President, and shall be signed by the Cashier or any Assistant Cashier, and countersigned by any officer appointed by the Board of Directors or the Executive Committee for that purpose, to be known as an Authorized Officer, and the seal of the Association shall be engraved thereon. Each certificate shall recite on its face that the stock represented thereby is transferable only upon the books of the Association by the holder thereof or his attorney, upon surrender of the certificate.

ARTICLE IX

CORPORATE SEAL

The Cashier or any Assistant Cashier shall have authority to affix the corporate seal to any documents requiring such seal, and to attest the same. Such seal shall be substantially in the following form: 'The National City Bank of New York.'

ARTICLE X

MISCELLANEOUS PROVISIONS

SECTION 1. *Fiscal year.*—The fiscal year of the Association shall be the calendar year.

SEC. 2. *Conveyances of real estate.*—All transfers and conveyances of real estate made by the Association in its own right, shall be executed on behalf of the Association, upon the direction of the Board of Directors or the Executive Committee, by the President or a Senior Vice-President, or a Vice-President, under the seal of the Association, attested by the Cashier, or an Assistant Cashier. Such transfers and conveyances may also be executed in such other manner and by such other officers as the Board of Directors or Executive Committee shall from time to time direct.

SEC. 3. *Records.*—The Articles of Association, the By-Laws and the proceedings of all meetings of the shareholders, the Board of Directors, the Executive Committee, and any other standing committee of the Board, shall be recorded in appropriate minute books provided for the purpose. The minutes of each meeting shall be signed by the Cashier or other officer appointed to act as Secretary of the meeting.

SEC. 4. *Banking hours.*—The Head Office of the Association shall be open for business from 10 o'clock,

a. m., to 3 o'clock, p. m., on each day of the year, excepting Sundays and such days or parts of days as may be recognized by the laws of the State of New York as legal holidays.

ARTICLE XI

BY-LAWS

SECTION 1. *Inspection.*—A copy of the By-Laws, with all amendments thereto, shall at all times be kept in a convenient place at the Head Office of the Association, and shall be open for inspection to all shareholders, during banking hours.

SEC. 2. *Amendments.*—These By-Laws may be amended, altered or repealed, at any regular meeting of the Board of Directors, by a vote of a majority of the whole number of the Directors.

* * *

I, Nathan C. Lenfestey, certify, that the foregoing is a true and correct copy of the By-Laws of The National City Bank of New York, and all of them as heretofore duly promulgated and now effective, and in testimony thereof I have hereunto affixed my official signature and the seal of the said Bank in the City of New York, on this 28th day of Jan., 1930.

(Sgd.) N. C. LENFESTEY
Cashier of The National City Bank of New York and Secretary of its Board of Directors

UNITED STATES OF AMERICA
STATE OF NEW YORK } *ss.*
COUNTY OF NEW YORK

On this 28th day of January, 1930, before me, a Notary Public in and for the County of New York,

State of New York, United States of America, and the undersigned witnesses, appeared Nathan C. Lenfestey, domiciled in Summit, New Jersey, to me known and known to me to be the Cashier of The National City Bank of New York and Secretary of its Board of Directors, all of which I attest. Said Nathan C. Lenfestey signed in our presence the foregoing certificate, after declaring on oath that he had compared the foregoing By-Laws with the original thereof, of which I attest he is the custodian, and that the seal affixed to said certificate is such corporate seal and that he is duly authorized to affix same to said certificate.

(Sgd.) CLARA E. VAN EMDEN
Notary Public New York County
N. Y. Co. Clks. No. 10, Reg. No. 0–53
Commission expires March 30, 1930

Witnesses:

(Sgd.) E. M. HEUER
M. D. MAHON

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.*

No. 5866, Series C

I, Daniel E. Finn, Clerk of the County of New York and also Clerk of the Supreme Court for the said County the same being a Court of Record, having a seal, do hereby certify, that

CLARA E. VAN EMDEN

whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written was, at the time of taking such deposition, or proof and acknowledgment,

a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 6th day of February, 1930.

(Sgd.) DANIEL E. FINN
Clerk

(SEAL.)

Exhibit D

(Here appears the picture of the building where the offices of the National City Bank of New York in New York are located.)

55 WALL STREET

CONDENSED STATEMENT OF CONDITION, JUNE 30, 1931
THE NATIONAL CITY BANK OF NEW YORK
INCLUDING DOMESTIC AND FOREIGN OFFICES

(SEAL)

CONDENSED STATEMENT OF CONDITION, JUNE 30, 1931

DIRECTORS

HUGH B. BAKER, President, The National City Company
SOSTHENES BEHN, Chairman, International Telephone & Telegraph Corporation
CURTIS E. CALDER, President, American & Foreign Power Company, Inc.

FLOYD L. CARLISLE, Chairman of the Board, Niagara Hudson Power Corporation
GUY CARY, of Messrs. Shearman and Sterling
EDWARD A. DEEDS, 52 Wall Street
CLEVELAND E. DODGE, Vice-President, The Phelps, Dodge Corporation
FRED J. FISHER, Vice-President and Director, General Motors Corporation
PHILIP A. S. FRANKLIN, President, International Mercantile Marine Company
JOHN A. GARVER, of Messrs. Shearman and Sterling
JOSEPH P. GRACE, Chairman of the Board, W. R. Grace and Company
GERRISH H. MILLIKEN, President, Deering, Milliken and Company, Inc.
CHARLES E. MITCHELL, Chairman
JAMES H. PERKINS, President, City Bank Farmers Trust Company
JAMES H. POST, President, The National Sugar Refining Co.
GORDON S. RENTSCHLER, President
PERCY A. ROCKEFELLERS, 25 Broadway
JOHN D. RYAN, Chairman of the Board, Anaconda Copper Mining Co.
WILLIAM A. SIMONSON, Senior Vice-President
SAMUEL SLOAN, 22 William Street
JAMES A. STILLMAN, 17 East 49th Street
ERIC P. SWENSON, of S. M. Swenson and Sons
GERARD SWOPE, President, General Electric Company
BEEKMAN WINTHROP, of Robert Winthrop and Company

THE NATIONAL CITY BANK OF NEW YORK

Chairman: CHARLES E. MITCHELL
President: GORDON S. RENTSCHLER
Senior Vice-President: WILLIAM A. SIMONSON
Vice-President and Manager Overseas Division: JOSEPH H. DURRELL

VICE-PRESIDENTS

EDWARD F. BARRETT
WM. GAGE BRADY, Jr.
GEORGE D. BUCKLEY
GORDON J. CAMPBELL

VICE-PRESIDENTS—continued

HERMAN J. COOK
JOSEPH T. COSBY
DEWITT A. FORWARD
GEORGE W. FRAKER
JAMES L. HARRISON
BOIES C. HART
HARRY E. HENNEMAN
WILLIAM W. HOFFMAN
HORACE F. HOWLAND
ALLEN G. HOYT
JAMES A. JACKSON
WILLIAM S. LAMBIE
WILLIAM J. NOONAN
JAMES B. PIKE
THOMAS E. REYNOLDS
GEORGE E. ROBERTS
HOWARD C. SHEPERD
DOUGLASS B. SIMONSON
ROGER STEFFAN
JACOB WOHNSIEDLER

COMPTROLLER

DANIEL C. BORDEN

VICE-PRESIDENT AND EXECUTIVE ASSISTANT

LEE E. OLWELL

Cashier: NATHAN C. LENFESTEY

ASSISTANT VICE-PRESIDENTS

CHARLES T. AYLES
KENNETH W. BANTA
JAMES B. BIRMINGHAM
DONALD McK. BLODGET
CHARLES D. BOWSER
HUGH BOOKS
FARRIS CAMPBELL
THOMAS J. CONNELLAN
JOHN L. CURTIS
CHASE L. DAY
A. VICTOR EDWARDS
CHARLES W. FERRIS
ROBERT FORGAN
JAMES M. FRASER
DANIEL A. FREEMAN, Jr.
WILLIAM N. FULKERSON
CHARLES C. HILLIARD
WALTER J. HOFFMAN
F. JOSEPH HOLLERAN
VINCENT DE P. JAMME
HENRY A. KOELSCH, Jr.
GEORGE A. KURZ
BURNESS KYDD
HILARY W. LUCKE
REGINALD H. MARLOW
JAMES C. MARTINE
HOBART M. McPHERSON
IRVING H. MEEHAN
WILLIAM T. MORAN
WILLIAM R. MORRISON
LOUIS NAETZKER
D. JOSEPH PALMER
WILLIAM G. F. PRICE
EDWARD F. REGAN
LEO N. SHAW
CHARLES V. SHEEHAN
ARTHUR C. SHOREY
ROBERT E. SHOTWELL
WILBERT WARD
PERCY WEST
HORACE O. WESTMEN
GEORGE WHITLOCK
MURRAY S. WILSON
JOHN F. YOUNG

ASSISTANT COMPTROLLERS

WALTER BROWN
ROWLAND R. HUGHES
JAMES A. MACKAY
FRANK E. RASMUSSEN

ASSISTANT CASHIERS

HALSEY G. BECHTEL
ARTHUR V. BENNETT
ERNEST C. BOGERT
ERNEST L. BRIGHAM
WALTER J. BROTHERTON
EVERETT W. BROWN
ARTHUR C. CHADBOURNE
ABRAM V. HAVENS
HAROLD R. HAYES
EDWARD P. HOFFMAN
JOHN L. HOGEBOOM
HAROLD H. HOLLINGSHEAD
GUY HOLMAN
JOHN H. HOVERMAN
ALFRED MULLEN
FRANCIS W. MYERS
WILLIAM A. NEEREAMER
GEORGE F. NOLTE
HAROLD W. OSTERHOUT
EDWARD L. PIERCE
THOMAS A. RAVE
LEWIS S. CLAPP
CHARLES H. CLARK
DUDLEY DILLON
DUNCAN DUNBAR
HAROLD A. DWYER
MARCUS H. ELLIOTT
RICHARD W. FOOTE
REGINALD G. FRANCKLYN
GEORGE GRISWOLD
GEORGE A. GUERDAN
HARRY D. HALL
HARRY W. JONES
PERRY W. JONES
MATHEW J. KELSH
GEO. A. KING, Jr.
J. EVERETT KOOP
F. WALDO LATSON
JAMES B. LITTLE
ROBERT H. MATSON
GEOFFREY C. MAY
WARD MILLER
JAMES J. MULHEARN
GEORGE F. ROBERTSON
JAMES S. ROCKEFELLER
LEO. J. SCHOENHOFF
VICTOR F. SCHROETER
JOHN E. SHEA
WILLIAM J. SIEMON
WALTER G. SPEER
WM. F. SWITZLER
FREDERICK A. TURCOTTE
JAMES WALLACE
FREDERICK C. WINDISCH

STATISTICIAN

GEORGE B. ROBERTS

ASSISTANT STATISTICIAN

ALAN H. TEMPLE

THE NATIONAL CITY BANK OF NEW YORK

Including Domestic and Foreign Offices

CONDENSED STATEMENT OF CONDITION AS OF JUNE 30, 1931

ASSETS			LIABILITIES		
Cash in Vault and in Federal Reserve Bank	$161,133,434.74		Capital	$110,000,000.00	
Due from Banks and Bankers	182,415,687.02		Surplus	90,000,000.00	
		$343,549,121.76	Undivided Profits	25,769,139.11	$225,769,139.11
Loans, Discounts and Bankers' Acceptances		1,003,815,601.27	Reserve for:		
United States Government Bonds and Certificates	$223,030,410.83		Contingencies	$7,313,906.96	
State and Municipal Bonds	6,216,038.17		Accrued Interest, Discount and other Unearned Income	3,771,573.78	

THE NATIONAL CITY BANK OF NEW YORK—Continued

CONDENSED STATEMENT OF CONDITION AS OF JUNE 30, 1931—Continued

ASSETS			LIABILITIES		
Stock in Federal Reserve Bank	$6,600,000.00		Taxes, Dividends and Accrued Expenses, et cetera	$9,157,936.01	
Other Bonds and Securities	122,557,108.35				$20,243,416.75
		$358,403,557.35	Liability as Acceptor, Endorser or Maker on Acceptances and Foreign Bills		226,571,009.67
Ownership of International Banking Corporation		8,000,000.00	Deposits		1,460,557,029.53
Bank Buildings		55,612,010.35			
Items in Transit with Branches		21,773,839.24			
Customers' Liability Account of Acceptances		174,920,242.85			
Other Assets		7,066,222.24			
Total		$1,973,140,595.06	Total		$1,973,140,595.06

FIGURES OF FOREIGN OFFICES WHICH ARE INCLUDED HEREIN ARE AS OF JUNE 25, 1931

THE NATIONAL CITY BANK OF NEW YORK
Head Office: 55 Wall Street, New York

FOREIGN BRANCHES

ARGENTINA:
- Buenos Aires
- *Sub-branches*
- Plaza Once
- Retiro
- Rosario

BELGIUM:
- Antwerp
- Brussels

BRAZIL:
- Rio de Janeiro
- Pernambuco
- Santos
- Sao Paulo

CHILE:
- Santiago
- Valparaiso

CHINA:
- Canton
- Hankow
- Hongkong
- Peiping
- Shanghai
- Tientsin

COLOMBIA:
- Bogota
- Cali
- Medellin

CUBA:
- Havana
- *Sub-branches*
- Belascoain
- Cuatro Caminos
- Galiano
- La Lonja
- Plaza de la Fraternidad
- Caibarien
- Camaguey
- Cardenas
- Ciego de Avila
- Cienfuegos
- Florida
- Guantanamo
- Holguin
- Manzanillo
- Matanzas
- Moron
- Nuevitas
- Palma Soriano
- Pinar del Rio
- Remedios
- Sagua la Grande
- Sancti Spiritus
- Santa Clara
- Santiago

FOREIGN BRANCHES—continued

DOMINICAN REPUBLIC:
Santo Domingo City
Barahona
La Vega
Puerto Plata
San Pedro de Macoris
Santiago de los Caballeros

ENGLAND:
London
36, Bishopsgate
11, Waterloo Place

INDIA:
Bombay
Calcutta
Rangoon

ITALY:
Milan
Genoa

JAPAN:
Kobe
Osaka
Tokio
Yokohama

MANCHURIA:
Dairen
Harbin
Moukden

MEXICO:
Mexico City

PERU:
Lima

PHILIPPINE ISLANDS:
Manila
Cebu

PUERTO RICO:
San Juan
Arecibo
Bayamon
Caguas
Mayaguez
Ponce
Santurce

REP. OF PANAMA:
Panama
Colon

STRAITS SETTLEMENTS:
Singapore

URUGUAY:
Montevideo

VENEZUELA:
Caracas

THE NATIONAL CITY BANK OF NEW YORK (FRANCE) S. A.

PARIS

39–41 Boulevard Haussmann 60 Avenue des Champs Elysees

NICE

6 Jardin du Roi Albert 1 er

INTERNATIONAL BANKING CORPORATION

Head Office: 55 Wall Street, New York

FOREIGN AND DOMESTIC BRANCHES

UNITED STATES	SPAIN		ENGLAND
San Francisco	Madrid	Barcelona	London

and Representatives in the National City Bank Chinese Branches

BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI

Head Office: Port-au-Prince, Haiti

THE NATIONAL CITY SAFE DEPOSIT COMPANY

Chairman: CHARLES E. MITCHELL

President: GORDO S. RENTSCHLER

Safe Deposit Facilities are available in the Greater New York Branches of THE NATIONAL CITY BANK OF NEW YORK.

THE NATIONAL CITY BANK OF NEW YORK

DOMESTIC BRANCHES

BOROUGH OF MANHATTAN

Bowery at Bond Street
42nd Street at Madison Avenue
Fifth Avenue at 28th Street
57th Street at Seventh Avenue
72nd Street at Broadway
96th Street at Broadway
Park Avenue at 57th Street
Canal Street at Broadway
One Park Avenue
123 East 86th Street
Varick at Vandam Street
4255 Broadway
135 East 14th Street
86th Street at Broadway
Fifth Avenue at 41st Street
Madison Avenue at 72nd Street
72nd Street near Third Avenue
79th Street at Amsterdam Avenue
Fifth Avenue at 13th Street
22 William Street
34th Street at Seventh Avenue
Park Avenue at 96th Street
220 East 42nd Street
111th Street at Broadway
79th Street at First Avenue
23rd Street near Lexington Avenue
Seventh Avenue at 23rd Street
125th Street at Old Broadway
135 West 125th Street near Seventh Avenue

BOROUGH OF BRONX

149th Street at Courtland Avenue Creston Avenue near Fordham Road.

BOROUGH OF BROOKLYN

181 Montague Street
Nostrand Avenue at Herkimer Street
Myrtle Avenue at Clinton Avenue
Fifth Avenue at 54th Street
Flatbush Avenue near Bergen Street
Flatbush Avenue at Church Avenue
Myrtle Avenue at Bleecker Street
Kings Highway at East 15th Street
Pennsylvania Avenue at Liberty Avenue
Eighteenth Avenue at 64th Street
Fourth Avenue at 85th Street
Third Avenue at 36th Street
Flatbush Avenue at Livingston Street
Manhattan Avenue at Noble Street
618 Brighton Beach Avenue

BOROUGH OF QUEENS

39–10 Main Street, Flushing
Queens Plaza East, Long Island City
218th St. at Jamaica Ave., Queens Village
Myrtle Avenue at Fresh Pond Road, Ridgewood
Continental Avenue at Austin Street, Forest Hills
92–11 Union Hall Street, Jamaica
Roosevelt Avenue at 81st Street, Jackson Heights
30th Avenue at 37th Street, Astoria

THE NATIONAL CITY COMPANY
National City Bank Building, New York

(Investment affiliate of The National City Bank of New York)

CHARLES E. MITCHELL, Chairman.

HUGH B. BAKER, President

Offices in more than fifty leading financial centers throughout the United States and in foreign countries.

Exhibit E

PHILIPPINE ISLANDS
CITY OF MANILA } *ss.*

I, Cesar Miraflor, a notary public in and for the City of Manila, Philippine Islands, do hereby certify that I have compared the foregoing copy of the Power of Attorney executed by The National City Bank of New York in favor of Richard E. Shaw, through its Vice-President, H. T. S. Green, on the 7th day of February, 1930, and that the same is a true and correct copy of the Power of Attorney duly filed with the Mercantile Register of the Bureau of Commerce on the 19th day of March, 1930, which was shown to me for the purpose.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, this 26th day of August, 1933.

Document No. 618; Page 40; Book IV; Series of 1933.

(Sgd.) CESAR MIRAFLOR
Notary Public
My commission expires December 31, 1934

CM–31.

(20–CENTAVO DOCUMENTARY STAMP)

(August 26, 1933)

POWER OF ATTORNEY TO RICHARD E. SHAW
Manager

UNITED STATES OF AMERICA
STATE OF NEW YORK } *ss.*
COUNTY OF NEW YORK

On this 4th day of February, 1930, before me, a Notary Public in and for the County of New York,

State of New York, United States of America, and the undesigned witnesses, appeared H. T. S. Green, a Banker, domiciled in Hewlett, New York, the Vice-President of a corporation duly constituted and registered in accordance with the laws in force in the United States of America, under the name of The National City Bank of New York. The said H. T. S. Green is of full age and competent to act in the premises, to me personally known, all of which I attest. I further certify that the said H. T. S. Green is authorized to execute this instrument in virtue of the powers granted to him by Resolution of the Board of Directors of the said Bank, the By-Laws of the said Bank and the laws of the United States of America. The appearer said: That, in the name and on behalf of the corporation named The National City Bank of New York, he hereby nominates, constitutes and appoints Richard E. Shaw, Manager, of legal age, Banker, and now residing in Manila, Philippine Islands, the true and lawful attorney and agent of the said Bank, with full power and authority as Manager, in the name or on behalf of the said Bank, or any of its Branches, or any interest it or they may have or represent, as follows:

I. As manager, to manage, transact and generally conduct in the name of the said Bank, and in its place and stead, a general banking business at any and all branches, sub-branches, agencies or offices of the said Bank now or hereafter established, with all powers and authority requisite and necessary for that purpose and, subject to the limitations hereinafter expressed, to sign the name of said Bank whenever requisite or expedient in the transaction and conduct of its said business and, generally, to do each and every

such act, matter or thing as the nature of the said banking business may require.

II. To make, sign, draw, issue, indorse, discount, negotiate, pay, accept, collect, receipt, renew, extend and protest any and all bills of exchange, checks, drafts, promissory notes, letters of credit or other negotiable instruments and other documents of credit, ordinary correspondence, advices of drafts drawn and indorsements on checks, drafts and bills of exchange deposited for the credit of the Home Office or any Branch, provided, however, that all such instruments or documents involving payments or transfers of funds or transfers or deliveries of securities from the Bank or any of its branches to any other bank, corporation, firm or individual shall bear the joint signatures of the said Richard E. Shaw, Manager, and of one other person, who shall be designated from time to time by the Chairman, President, a Senior Vice-President or a Vice-President of the said Bank in writing for the purpose or whose signature shall be contained in the then current Circular of "Authorized Signatures of the National City Bank of New York and its Branches," or who shall hold a power of attorney from the said Bank for the above-mentioned purposes.

III. To buy, sell, receive, hold, transfer, deliver, hypothecate and pledge any and all bills, bills of lading, bullion, checks, drafts, exchange, money, accounts notes, bonds or other negotiable instruments, property or documents purporting to evidence title thereto, and any and all securities or property whatsoever; to accept the transfer and delivery of any and all shares of the capital stock of any corporation or association, whether organized for banking, commercial, industrial, or other purposes, including bonds of any state and any and

all state securities, with power to carry out all formalities laid down by law and by regulations applying to the transfer and registration thereof; and likewise to indorse, transfer and deliver such certificates or shares or securities and to effect such transfer on the books of any corporation or association; provided, however, that any act done pursuant to the authority of this Article III shall require the joint action or signature of the said Richard E. Shaw, Manager, and of one other person who shall be designated, from time to time by the Chairman, President, a Senior Vice-President or a Vice-President of the said Bank in writing for the purpose or whose signature shall be contained in the then current Circular of "Authorized Signatures of The National City Bank of New York and its Branches," or who shall hold a power of attorney from the said Bank for the above-mentioned purposes.

IV. In case of the absence or inability to act of the said Richard E. Shaw, Manager, all instruments and documents which he has power to sign or execute alone or jointly on behalf of the Bank hereunder may be signed or executed, alone or jointly, as the case may be, either by such person or persons as may from time to time be designated by the Chairman, President, a Senior Vice-President or a Vice-President of the said Bank in writing for the purpose or by any person whose signature shall appear in the said Circular as authorized to sign, otherwise than Per-Procuration, at the Home Office or as a Branch Manager, and, in case of the absence or inability to act both of any person authorized thus to sign at the Home Office and of any Branch Manager, all such instruments and documents

may be so signed or executed, alone or jointly, as the case may be, by any person whose signature shall appear in the said Circular as authorized to sign as a Sub-Manager; and, in case of the absence or inability to act of any person authorized thus to sign at the Home Office and of any Manager and of any Sub-Manager, all such instruments and documents may be so signed or executed, alone or jointly, as the case may be, by any person whose signature shall appear in the said Circular as authorized to sign as a Pro-Manager; for which purpose the person or persons who shall be so designated in writing or whose signatures shall appear in the said Circular are hereby appointed special attorneys in fact. For the protection of third parties dealing with the Bank in reliance hereon, the fact that any instrument is signed by a person authorized as provided in this Paragraph IV, acting as a substitute in the place and stead of the Manager, owing to the absence or inability to act of the Manager, or acting as substitute for any other person authorized to sign as in this paragraph provided, owing to the absence or inability to act of such other person, the fact that such document or instrument is signed by such substitute shall be deemed conclusive proof that the Manager or other person for whom such substitute so signs was, at the time of such signing, either absent or unable to act.

V. To open, receive and maintain deposit and other accounts, and to act as Trustee or depositary.

VI. To borrow money and to make loans, with or without collateral security, upon bonds, stocks or other documents of title, sugars, coffee, goods or other properties.

VII. To ask, demand, collect, receive and take all necessary and lawful means to recover any and all moneys, debts or property and to give acquittances therefor.

VIII. To give, receive and carry out orders on commission and to forward goods and securities.

IX. To carry out custom house operations.

X. To make out or obtain acknowledgments and way-bills.

XI. To take delivery of letters, telegraphic messages, drafts, packages, and securities of any kind, from State Officers or from the Post Office, Railways or Steamship Companies against the necessary receipt and discharge signature.

XII. To procure insurance against fire, marine or other risks to property of the said Bank, or in which it may be concerned or have or represent any interest.

XIII. To hire, rent or lease any and all real estate and personal property, with power to execute all necessary indentures, leases and other documents in connection therewith, upon such terms as the said attorney may find proper, and to accept guaranties and chattel mortgages.

XIV. To register deeds and other documents and these presents and to pay any and all taxes, fees or other governmental charges determined by law.

XV. To take mortgages on real estate or on mortgage credits; to cancel them partially or totally; to modify or extend them; or to cede, transfer, assign, postpone or otherwise dispose of them with or without general or special warranty, any document executed hereafter in the exercise of any power conferred by

this Article XV to be countersigned in the manner provided in Article III hereof.

XVI. To attach, distrain or replevy property.

XVII. To liquidate accounts with debtors and creditors, approving or disapproving their balances.

XVIII. To apply for letters of administration upon the estate or for the appointment of a liquidator or receiver of any debtor; to institute proceedings in bankruptcy, insolvency or judicial liquidation; to prove, guarantee, verify, accept, dispute or prosecute claims, and to sign any composition or other agreement and, in general, to represent the said Bank in such proceedings or in the affairs of any corporation or association and, on behalf of the said Bank, to become a director or officer thereof.

XIX. To attend, take part in or vote at any and all meetings of creditors, shareholders, directors or officers of any corporation or association, or for other business purposes, or to give proxy therefor.

XX. To adjust, compound, compromise, contest, defend, settle or submit to arbitration or the decision of amicable referees any and all controversies, suits, actions and other legal or equitable proceedings in which the Bank may be interested, and to participate in any scheme of distribution of funds.

XXI. To represent and defend the Bank and its interests before any and all judges and courts, of all classes and jurisdictions, in any action, suit or proceedings in which the Bank may be a party or may be interested in administrative, civil, criminal, contentious or contentious-administrative matters, and in all kinds of lawsuits, recourses or proceedings of any kind

or nature, with complete and absolute representation of the Bank, whether as plaintiff or defendant, or as an interested party for any reason whatsoever, and with power to institute actions, file exceptions, counter demand, submit proofs and allegations, initiate the regular and special recourses, make bids, undertake the execution of sentences, challenge all kinds of judges or officials, propound interrogatories, request the recognition of signatures or of documents, institute all kinds of actions for the repression of crimes, file pleas for "amparo" and oppose its being granted to others, and desist from all classes of actions, exceptions and recourses; for the purpose of representing the Bank before any and all judges and courts and in any action, suit or proceeding whatsoever in which the Bank is interested, to employ, retain, dismiss and grant all necessary powers in favor of solicitors, proctors, lawyers or other persons suitable to defend the rights, privileges and interests of the Bank, with such powers as may be considered necessary or expedient, although they are not herein mentioned, and, in general, to exercise all the rights of the Bank in all kinds of suits, actions, and legal or equitable proceedings; with power to collect the amount of sums lodged in Court on behalf of the Bank and for such amounts collected to make out receipts in legal form.

XXII. To employ, retain, suspend or dismiss any and all tellers, clerks and other employees at any branch, sub-branch, agency or office of the said Bank now or hereafter established.

XXIII. To authenticate by his signature at any time, and from time to time, for the purpose of giving full force and effect thereto for all purposes under any law in force in any country or subdivision of any

country, (*a*) any writing signed by the Chairman, President, a Senior Vice-President or a Vice-President of The National City Bank of New York, designating a person to sign as provided in Paragraphs II, III, IV, and XV of this Power of Attorney, and (*b*) the then current Circular of "Authorized Signatures of The National City Bank of New York and its Branches." Every such writing or current circular so authenticated by him shall be entitled to full faith and credit before every office and authority in any country or subdivision of any country, and the person named therein who shall sign jointly or alone as provided in said Paragraphs II, III, IV, or XV of this power of attorney shall be as fully authorized to so sign, jointly or alone, in the events and for the purposes mentioned in said Paragraphs II, III, IV, and XV, as though he had been furnished with a special power of attorney from the Bank empowering him to do so; and all such persons are hereby fully vested with such power.

XXIV. To present for official registration certified copies of the Bank's Articles of Association, By-Laws and any other documents required by the laws of any country or place in which this power of attorney may be registered, and to do and perform any and all other acts and things required by the laws of any such country or place relating to the establishing or the maintenance in business of foreign corporations therein and the opening of branches thereof, and also for said Bank and in its name and as its act, to accept service of summons and process in all legal proceedings against the Bank and all notices affecting it, to render reports and evidence of the solvency and fair dealing of the Bank and any other information of whatever kind or nature that may from time to time be required

of the Bank by the Secretary of Commerce and Communications or his authorized representative or other government authorities, to do all things necessary to prosecute the application of this Bank for a license to do business in the Philippine Islands, to make such alterations and amendments in such application as may be necessary to conform to the requirements of the governmental authorities, to receive the license, and to do and perform any and every act and thing whatsoever which may be necessary in connection therewith.

And the said The National City Bank of New York hereby ratifies and confirms all that its said Attorney may or shall lawfully do or cause to be done within the powers which are conferred by virtue of this instrument, including that which he may do or cause to be done after the revocation of the said powers but before notification of such revocation.

IN WITNESS WHEREOF, The National City Bank of New York has caused this instrument to be signed by one of its Vice-Presidents, and its corporate seal to be hereto affixed, this 7th day of February, 1930.

(Sgd.) H. T. S. GREEN

Witnesses:

(Sgd.) G. DENZAU

(Sgd.) R. B. WILLIAMS

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.*

On this 4th day of February, 1930, before me personally came H. T. S. Green, to me known, who being by me duly sworn, said that he resides in Hewlett, New York; that he is a Vice-President of The National City

Bank of New York, the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of the said corporation, and that he signed his name thereto by like authority.

(Sgd.) CLARA E. VAN EMDEN
Notary Public New York County
N. Y. Co. Clks. No. 10, Reg. No. 0–53
Commission expires March 30, 1930

No. 5874, Series C

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.*

I, Daniel E. Finn, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, having a seal, do hereby certify, that

CLARA E. VAN EMDEN

whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to

said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 6th day of February, 1930.

(Sgd.) DANIEL E. FINN
Clerk

GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF AGRICULTURE AND COMMERCE
BUREAU OF COMMERCE
MERCANTILE REGISTER

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

This is to certify that the annexed is a true and complete transcript of the

POWER OF ATTORNEY EXECUTED BY "THE NATIONAL CITY BANK OF NEW YORK," IN FAVOR OF RICHARD E. SHAW,

which were duly filed with the Mercantile Register of the Bureau of Commerce on the 19th day of March, Anno Domini nineteen hundred and thirty.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the said Register to be affixed at Manila, this eleventh day of February, Anno Domini nineteen hundred and thirty-three.

(Sgd.) TOMAS CONFESOR
Director

(SEAL.)
(STAMP.)

Exhibit F

B. I. R. No. 35
NEW B. I. R. No. 601

BANKS AND BANKERS

Schedule G Paragraph..... Assessment No. .....

Statement of the monthly amount of deposits, capital employed, of the The National City Bank of New York, Municipality or Province of Manila, Philippine Islands, for the six months ending June 30th, 1931.

(Section 1501, Article VII, Act No. 2711) NOTE.—All amounts to be reduced to Philippine currency.

	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	TOTAL TAXES
Average monthly deposit....	₱17,733,470.58	₱18,419,904.88	₱18,019,597.35	₱18,173,420.89	₱18,293,437.61	₱18,338,993.16	₱60,543.79
Taxes at rate of $\frac{1}{10}$ of 1 per cent. Total Foreign Banks	324,493.92	167,915.75	293,765.97	171,102.48	116,597.26	141,273.87	675.64
Average capital employed....	6,441,872.28	.....	.....	.....	.....	6,441,872.28	16,104.68
Taxes at rate of $\frac{1}{4}$ of 1 per cent.....	.....	.....	.....	.....	.....	.....	.....
Average circulation.....	.....	.....	.....	.....	.....	.....	.....
Taxes at rate of $\frac{1}{12}$ of 1 per cent.....	.....	.....	.....	.....	.....	.....	.....
Average circulation in excess of paid-in capital.....	.....	.....	.....	.....	.....	.....	.....
Taxes at rate of 1 per cent.... (Circulation taxes collected under Act 1790 are reported on B. I. R. Form No. 892)	.....	.....	.....	.....	.....	.....	.....
GRAND TOTAL.....	.....	.....	.....	.....	.....	.....	77,324.11

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I hereby certify that the foregoing is a true and complete statement of the average monthly amount of deposits, capital employed, of the THE NATIONAL CITY BANK OF NEW YORK, Municipality or Province of Manila, Philippine Islands, subject to taxes under the provisions of Art. VII, Act No. 2711, Philippine Legislature, for the six months ending June 30, 1931.

(Sgd.) F. C. BAILEY
Pro-Manager

[SEAL]

Tax paid by receipt No. paid 10|27|31
Schedule G. Paragraph . . Assessment No. . .

(Collecting officer)

PHILIPPINE ISLANDS
Province of . . . . . } ss.
Municipality of City of Manila

Rendered in Duplicate

Subscribed and sworn to before me this 24th day of October, 1931.
Person signing exhibited to me his Cedula No. F-2502 issued at Manila, P. I., on Jan. 8, 1931.

Doc. No. 109 Page 61
Book VI Series of 1931
My commission expires Dec, 31, 1932.

(Sgd.) . . . . . .
Notary Public

(To be filled out in the cases of banks operating as branches of foreign banks for capital tax purposes)

Capital (paid up). $110,000,000.00

RESERVE FUNDS:		
.....	$.....	
.....	$.....	$.....
.....	$.....	
Surplus		$90,000,000.00
.....		.....
Undivided Profits		$24,554,298.54
.....		.....
.....		.....
TOTAL CAPITAL on first day of semester (January, 1931)		$224,554,298.54
TOTAL CAPITAL reduced to Philippine Currency		₱449,108,597.08
Net Profit at close of semester, as per attached balance sheet		$10,690,303.41
Net Profit at close of semester, reduced to Philippine Currency		₱21,380,606.82
Net Profit of Manila Branch, including all branches within the Philippine Islands		₱303,702.22
Rate of exchange at close of business, last day of semester Dividend March 31	4,510,000.00	.....

I HEREBY CERTIFY that the foregoing is a true and correct statement of the capital, net profit of the bank and of its Manila branch, and of the rate of exchange prevalent at the close of the semester covered by this return.

.....

Manager

The capital of the bank at the beginning of the semester will be ascertained by adding together the paid up capital, all reserve funds, surplus, and undivided profits. The monthly profits not being readily ascertainable, the *average* monthly profits should be used, same being ascertained by dividing by six the net gain at the close of the semester. By adding the average profit of the first month of the semester to the capital at the beginning of the semester, the capital for the second month of the semester is obtained; by adding the average profit of the second month to the capital thereof, ascertained as indicated, the capital for the third month is obtained, and so on up to the last month of the semester.

To obtain the average capital of the bank for the semester, add together the capital for the individual months, as ascertained above, and divide by six.

MANILA, Aug. 29, 1933

I HEREBY CERTIFY that this is a true copy of the original Bank tax return on National City Bank of N. Y. for the year 1931, on file in the Bureau of Internal Revenue and that I am the legal custodian of the income tax records of said Bureau.

(Sgd.) CRISPIN LLAMADO
Chief, Income Tax Division
Bureau of Internal Revenue

[SEAL]

Exhibit G

TO BE FILLED IN BY RECEIVING OFFICER

Received by Bur. of Int. Revenue.

Municipality of Income Tax Division.

Province of.....

Date received Apr. 30, 1932.

IMPORTANT

Read this form and all instructions carefully, answer the questions below and fill in the supplementary statement before making entries in return proper. Totals in supplementary statement must agree with totals in return.

B. I. R. FORM No. 17.02
OLD B. I. R. FORM No. 571
(Revised, May, 1931)

INCOME TAX

THE PENALTY for failure to have this return in the hands of the Collector or Provincial Treasurer within the time required by law is not more than ₱20,000 and the assessment is increased fifty per cent.

TO BE FILLED IN BY THE BUREAU OF INTERNAL REVENUE

Assessment No. A-30708, 1931.

Indexed by.....

Audited by.....

Assessed by.....

Recorded by.....

Transcribed by.....

TO BE FILLED IN BY TAXPAYER

Date of Incorporation.....

Under the laws of what country or state?.....

.....

Kind of business.....

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RETURN OF ANNUAL NET INCOME

(Chapter II of Act No. 2833, as amended by Acts Nos. 2926, 3026, 3605 and 3761)

CORPORATIONS

(Including domestic and foreign joint-stock companies, joint-accounts ("cuentas en participación"), associations, limited partnerships, general copartnerships, and corporations proper: EXCLUDING insurance companies and registered domestic general copartnerships, for which other forms of return are provided.)

Return of net income for the calendar year ended December 25th, 1931. By National City Bank of New York (Manila, Cebu) and located at Manila.

The address given must be that of the principal place of business of the corporation. If not a corporation, state nature of company, association or partnership and date of registration in the Mercantile Registry. If not registered, state so.

1. Gross income:		DEDUCTIONS	
(a) From operations	₱425,392.59	2. (a) Expenses, general	₱605,068.97
(b) From rentals		(b) Payments in lieu of rent	
(c) From interest	1,354,379.65	3. (a) Losses sustained charged off	216.76
(d) From dividends received		(b) Depreciation charged off	9,694.83
(e) From other sources	280,076.59	(c) Depletion charged off	
Total gross income	2,059,848.83	4. (a) Interest paid (see note 4a)	727,101.74
Total deductions	1,540,977.22	(b) Interest paid on deposits (deductible by banks only)	
Net income	518,871.61	5. (a) Taxes, domestic paid	198,894.92
7. Tax assessable at 3 per cent	15,566.15	(b) Taxes, foreign paid	
8.		Total deductions	1,540,977.22
Total amount due			

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QUESTIONS

PREDECESSOR BUSINESS

1. Did the corporation file a return under the same name for the preceding taxable year?..... If not, was the corporation in any way an outgrowth, result, continuation or reorganization of a business or businesses in existence during this or the preceding taxable year?..... If answer is "yes," give name and address of each predecessor business.

.....

.....

BASIS OF RETURN

2. Is this return made on the basis of accrued income and expenses?..... If not, describe fully what other basis or method was used in computing net income.....

.....

.....

ACCOMPANYING PAPERS

This return will not be accepted as complete unless accompanied by the following:

1. Balance sheet as of the last day of the taxable year (as required on page 4).
2. Returns of information covering income payments of ₱2,000 or more during the year (as required on page 4).
3. Returns of information covering dividends paid during the year (as required on page 4).

If any of the foregoing does not accompany this return, cross out same with ink and state below your reasons for failure to supply same.

.....

.....

All other statements, papers, etc. accompanying this return should be listed below.

.....

.....

We, officers of the above-named company, whose return of net income is herein set forth, being severally duly sworn, each for himself, depose and say that the items entered in the foregoing report and in the supplementary statement and in any of the papers accompanying this return are, to his best knowledge and belief, true and correct in each and every particular.

Sworn to and subscribed before me this 28th day of April, 1932.

(Sgd.) .....
Notary Public

My commission expires Dec. 31, 1932
Doc. No. 198. Page 97, Bk I, Series '32

Cedula No. F-9890
Issued at Manila.
Date Jan. 7, 1932.

Cedula No. F-9884
Issued at Manila.
Date Jan.7, 1932.

(Sgd.) .....
President

(Sgd.) .....
Treasurer

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SUPPLEMENTARY STATEMENT

The following information must be furnished by every corporation, joint-stock company, partnership, joint-account, or association, without which the return will not be accepted as complete. The items herein relate to the items listed in the above return form and bear corresponding numbers, and the totals set out in the above return must agree with the totals hereinafter set out.

Where sufficient space is not provided for the entry of the information required in this "Supplementary Statement," lists containing full information in the form indicated should be marked in accordance with the particular item end attached to this form.

PAID UP CAPITAL STOCK:

Unissued or treasury stock should not be included in this item, but only such stock as has been actually issued and is outstanding at the close of the year and for which payment has been received. Where the stock issued is payable in installments or assessments, only so much of it as has been actually paid in upon such installments or assessments should be reported.

If no capital stock is issued or if the capital stock is issued without par value, the amount of capital invested in the business at the close of the year, not including borrowed capital, will be entered under this item.

(*a*) Paid-up "common stock"	₱.....	.....	.....	...
(*b*) Paid-up "preferred stock"	.....	.....	.....	...
Total paid-up stock	₱.....	.....	.....	...
or (*c*) Capital employed in business	.....	.....	.....	...

1. **GROSS INCOME:**

All manufacturing, mercantile, or other corporations which determine their annual gain or loss by inventory are required to state the same in the form indicated herein. If the annual income or loss is determined otherwise, the methods employed must be stated in the space provided therefor. In case the annual gain or loss is determined by inventory, merchandise should be valued at (*a*) cost or (*b*) cost or market, whichever is lower, provided, however, that whichever basis was adopted by a taxpayer for the taxable year 1922 must be continued unless upon application to the Collector of Internal Revenue, permission is granted to change. If basis (*b*) is used it must be applied to each item in the inventory and not to a part only.

Write "C" or "CM" immediately before the amount column of the "stock on hand at close of year" and "stock on hand at beginning of year" to indicate that inventories are valued at either cost or cost or market, whichever is lower.

(*a*) **FROM OPERATIONS:**

Per inventory—

Sales during year	₱	
Stock on hand at close of year		₱
TOTAL		₱
Purchases during year	₱	
Stock on hand at beginning of year		₱
TOTAL		₱
*Gross gain or loss [1(*a*)]		₱

*(If result shows loss, make entry in red ink or strike out "gain.")

In the case of manufacturing corporations, "Purchases during the year" will include so much of the cost of goods, finished or unfinished, sold or unsold, as has not been separately deducted under any item of the return.

Overhead charges should not be included in inventory (see Item 2).

If inventory is not used, state below method of determining gain or loss from operations:

.....

.....

.....

In case of the sale of capital assets acquired prior to March 1, 1913, the profit or income to be returned will be determined in accordance with the Revised Income Tax Regulations. If acquired subsequent to March 1, 1913, then the profit or income to be returned is the difference between the cost and the selling price.

In the case of the sale of assets acquired prior to March 1, 1913, state—

(1) Original cost of assets..... ₱.....

(2) Fair market price or value as of March 1, 1913..... ₱.....

(3) Price at which assets were sold..... ₱.....

State how fair market price or value as of March 1, 1913, was determined:

.....

.....

.....

(b) FROM RENTALS AND ROYALTIES:

NAME AND ADDRESS OF TENANT OR LESSEE	AMOUNT OF RENTALS AND ROYALTIES
	₱
TOTAL	₱

(c) FROM INTEREST:

NAME OF PERSON OR COMPANY PAYING INTEREST	ADDRESS	AMOUNT
		₱
TOTAL		₱

(d) **FROM DIVIDENDS RECEIVED:**

Income derived from dividends or net profits on which the normal tax has been paid is not subject to tax. However, dividends received from corporations or associations which do not pay or are exempt from the payment of income tax, are subject to tax under this law.

NAME OF THE COMPANY PAYING THE DIVIDEND	ADDRESS	AMOUNT
		₱
TOTAL		₱

(c) FROM OTHER SOURCES:

NATURE OF SOURCES	ADDRESS	AMOUNT
Commission		₱95,091.38
Excess Reserve for Taxes		30,000.00
Other Income		112,892.90
Philippine Refining Company, Interest of New York		11,048.52
Recoveries received to New York		31,043.79
TOTAL		280,076.59

DEDUCTIONS

2. EXPENSES, GENERAL:

This item should include only the ordinary and necessary expenses paid or accrued within the year in the maintenance and operation of the business and properties of the corporations, itemized as per schedule below, and will not include any disbursements the deductions of which is specially provided for in the return form proper on page 1 of this form.

All expenses of material, labor, fuel, and other items entering into the cost of goods sold are deductible under this head as expenses provided such items have not been considered in determining the cost of purchases during the year when the income derived from operations is ascertained through an inventory as set out in item 1 (a) of this statement.

Expenditures for incidental repairs which do not add to the value or appreciably prolong the life of property are deductible as expenses, but expenditures for new buildings, permanent improvements or betterments which increase the value of property, or for restoring or replacing property are not deductible under this or any other item of the return. Such expenditures are property chargeable to capital account, to be extinguished through annual depreciation allowances.

Payments made to officers or employees who are stockholders, which payments are made in the guise of salaries or compensation and the amount of which is based upon the stockholdings of such officers or employees, are not deductible as a business expense.

(b) 1. Labor, wages, commissions, etc.		.....
2. Fuel, light, power, etc.		₱10,695.39
3. Rentals (ordinary)		94,800.00
4. Repairs, ordinary and incidental		.....
5. Salaries of officers and employees		361,242.11
6. Other expenditures—classify	Advertising	6,804.72
	Brokerage	6,400.00
	Cables	22,950.49
	Law cost	11,774.05
	Stationery	15,706.88
	Traveling	25,278.25
	Staff House	15,164.72
	Portage	4,543.13
	Insurance	4,270.79
	Sundries	25,438.44
TOTAL EXPENSES		605,068.97

(b) **PAYMENTS IN LIEU OF RENTS:**

This item should include all royalties and other charges, including any interest payments which the corporation is required to make for the right to use and possess property in which it has no title, interest, or equity. See Note 2 (a).

3. (a) **LOSSES:**

Losses deductible under this item must be distinguished from depreciation or allowances for exhaustion, wear and tear. The losses must be absolute, complete, actually sustained during the year and charged off on the books of the corporation, and if the losses result from the sale of assets acquired prior to March 1, 1913, such losses shall be ascertained in accordance with the Revised Income Tax Regulations.

Losses compensated by insurance or otherwise are not deductible.

KIND OF ASSETS	ORIGINAL AMOUNT	DATE CHARGED OFF	AMOUNT CHARGED OFF
	₱.....	₱.....	₱.....
TOTAL	₱.....	₱.....	₱.....

When were the deducted losses ascertained to be such?

How were they so ascertained?

In case of losses resulting from the sale of capital assets acquired prior to March 1, 1913, state—

(1) Original cost of assets..... ₱.....

(2) Fair market price or value as of March 1, 1913..... ₱.....

(3) Loss resulting from such sale..... ₱.....

State also how the fair market price or value as of March 1, 1913, was ascertained:

.....

.....

(*b*) **DEPRECIATION:**

The amount deductible on account of depreciation is an amount charged off on the books which fairly measures the loss during the year in the value of physical property by reason of exhaustion, wear and tear. Such amount should be determined upon the basis of the COST of the property and the probable number of years constituting its life. Stocks, bonds, and like securities, as well as any other intangible assets, are not subject to exhaustion, wear and tear within the meaning of the law. Hence any amount charged off as representing a SHRINKAGE in the value of such assets is not deductible either as depreciation or loss.

Depreciation computed on total invoice value of merchandise in stock is not an allowable deduction, since any loss due to the shrinkage in the salable value of the merchandise will be reflected in the sales when the merchandise is disposed of.

* Kind of Property	Its Cost	Probable Life After Acquisition	Amount of Depreciation	
			This Year	All Years to Date
Furniture and fixtures	₱.....	.....	₱9,694.83	₱.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Totals.....	₱.....	.....	₱.....	₱.....

* If buildings, state kind of construction.

(c) **DEPLETION:**

Depletion applies to the exhaustion of natural deposits, and contemplates a deduction to return to the corporation the capital invested, or in case of purchase prior to March 1, 1913, an amount sufficient to return to the corporation the fair market value of such deposits as of that date. An allowable deduction on account of depletion must not exceed that fair market value in the mine of the product thereof [redacted]ned and sold during the year, and in case of oil or gas wells the amount deductible should be computed upon the basis of the decline in the settled flow. The amount sought to be deducted on this account must be charged off on the books of the company.

* Kind of Property	Its Cost if Acquired Subsequent To March 1, 1913	† Fair Market Value As of March 1, 1913	Amount of Depletion	
			This Year	All Years to Date
		₱	₱	₱
TOTAL		₱	₱	₱

* Coal, iron ore, copper, oil, or gas. † State how fair market value as of March 1, 1913, was determined.

4. (a) **INTEREST DEDUCTIBLE:**

The amount of interest deductible under this item is the amount actually paid or incurred within the year on bonded or other indebtedness (except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income).

Interest, so called, or dividends paid upon preferred capital stock, is not deductible.

Interest deductible under this item includes all interest actually paid or incurred within the year on any debt for which the corporation or any property in which it has title, interest, or equity is pledged.

INTEREST PAYMENTS ACTUALLY MADE OR INCURRED DURING THE YEAR

All forms of indebtedness upon which interest was paid or incurred should be listed here.

Name or Kind of Obligation	Amount of Principal	Rate of Interest	Amount of Interest Paid
	₱		₱
TOTAL	₱		₱

(b) INTEREST PAID ON DEPOSITS:

Interest paid (by banks) on deposits or on money received for investment and secured by interest-bearing certificates of indebtedness issued by a bank, banking associations, loan or trust company is deductible in the entire amount so paid.

5. (a) TAXES—INSULAR, MUNICIPAL OR PROVINCIAL. ₱198,894.92.

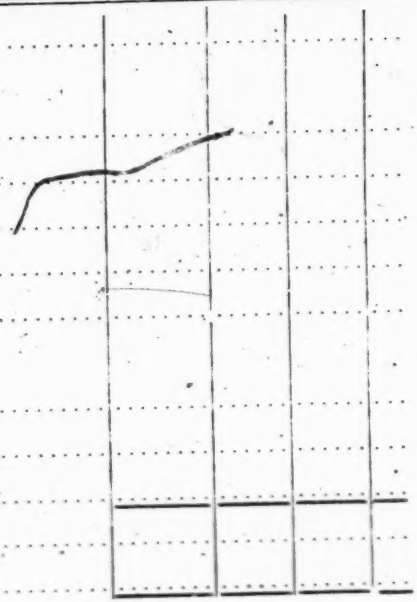
(b) TAXES—FOREIGN:

Taxes deductible under this item are such taxes as are imposed by the Government of the Philippine Islands, or by any province, city, municipality or township or by the Government of any foreign country, and are actually paid or accrued on the books of the corporations, which have become due and payable within the year for which the return is made, except that taxes imposed under the laws of a foreign Government are not deductible from the income arising and accruing to a foreign corporation from sources within the Philippine Islands, and except that taxes paid for local benefits or taxes paid by corporations pursuant to covenants guaranteeing their bonds to be tax-free, are not deductible.

Taxes paid by banks or other corporations on the value of their capital stock outstanding and in the hands of stockholders are not deductible. Such taxes are a primary liability of the stockholders, and as such chargeable against their net income.

RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

1. Net income (Item 6, page 1 of the return)
2. Nontaxable income (to be detailed):
   (*a*)
   (*b*)
   (*c*)
   (*d*)
3. Charges against reserve for bad debts
4. Charges against reserves for contingencies, etc., (to be detailed):
   (*a*)
   (*b*)
   (*c*)
5. Total of Lines 1 to 4, inclusive
6. Total from Line 14



7. Net profit for year as shown by books, before any adjustments are made therein (Line 5 minus Line 6)

8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year

9. Other credits to surplus (to be detailed):

   (a)

   (b)

   (c)

10. Total of Lines 7 to 9, inclusive

11. Total from Line 17

12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)

13. Unallowable deductions:

   (a) Donations, gratuities and contributions

   (b) Furniture and fixtures, additions, or betterments treated as expenses on the books

   (c) Replacements and Renewals

   (d) Additions to reserve for bad debts

   (e) Additions to reserves for contingencies, etc., (to be detailed):

      (1)

      (2)

      (3)

RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS—Continued

13. Unallowable deductions:—Continued.				
(*f*) Other unallowable deductions (to be detailed):				
(1)				
(2)				
(3)				
14. Total of Line 13				
15. Dividends paid during the taxable year, whether in cash, stock, or other property:				
(*a*) Date paid..... Character.....				
(*b*) Date paid..... Character.....				
(*c*) Date paid..... Character.....				
(*d*) Date paid..... Character.....				
16. Other debits to surplus (to be detailed):				
(*a*)				
(*b*)				
(*c*)				
17. Total of Lines 15 and 16				

BALANCE SHEET

A copy of the balance sheet as of the last day of the taxable year should be attached hereto.

WORKING PAPERS

Every corporation should preserve, available for inspection by an officer of the Bureau of Internal Revenue, working papers showing the balance in each account on the corporation's books that were used in preparing the return.

INFORMATION AT THE SOURCE

Every corporation making payments of salaries, wages, interest, rent, commissions, or other fixed or determinable income of ₱2,000 or more during the year, to any individual, fiduciary, or partnership, is required to make a true and accurate return to the Collector of Internal Revenue, showing the amount of such payments and the name and address of the recipient. It is also required to render a return of its payments of profits or dividends to stockholders during the year, stating the number and class of shares owned by such stockholder, and the date and amount of each dividend payment. Such returns of information must be attached hereto.

LIABILITY FOR FILING RETURNS

Corporations Generally.—Every domestic or resident corporation, joint-stock company, association, etc. not specifically exempted by Section 11 of Act No. 2833, as amended by Acts Nos. 2926, 3026, 3605, and 3761, whether or not having any net income, must file a retun.

Foreign Corporations.—Every foreign corporation doing business in or having income from sources within the Philippine Islands must make a return of income on this Form. The return should be filed with the treasurer of the province in which is located its principal place of business, or if it have no office of any kind or agency in the Philippine Islands, then with the Collector of Internal Revenue, Manila.

TIME AND PLACE FOR FILING

The return must be filed with the treasurer of the province in which the corporation's principal office is located on or before March 1, if the return is made on the basis of the calendar year. If the return is made on the basis of a fiscal year, it must be filed within sixty days after the close of such fiscal year. In the City of Manila all returns must be filed with the Collector of Internal Revenue.

The Collector may grant a reasonable extension of time for filing a return, if application therefor is made before the date prescribed by law for filing such return, whenever in his judgment good cause exists.

SIGNATURES AND VERIFICATION

The return shall be sworn to by the president, vice-president, or other principal officer, and by the treasurer or assistant treasurer. The return of a foreign corporation having an agent in the Philippine Islands shall be sworn to by such agent. If receivers, trustees, or assignees are operating the property or business of the corporation, such receivers, trustees or assignees shall execute the return for such corporation under oath.

RECORDS AND BOOKS OF ACCOUNT

With reference to the necessity of keeping records or books of account, the attention of all corporations, companies, partnerships and associations is drawn to the provisions of Act No. 3292 known as the Bookkeeping Law and to Regulations No. 58 of the Department of Finance.

MANILA, *August 28, 1933.*

I HEREBY CERTIFY that this is a true copy of the original Income Tax Return of National City Bank of New York for the year 1931, on file in the Bureau of Internal Revenue and that I am the legal custodian of the income tax records of said Bureau.

[SEAL]

(Sgd.) CRISPIN LLAMADO
Chief, Income Tax Division
Bureau of Internal Revenue

Exhibit H

B. I. R. FORM No. 425.
NEW B. I. R. FORM No. 17.09

(DUPLICATE)

OFFICIAL RECEIPT

The Government of the Philippine Islands
Department of Finance
Bureau of Internal Revenue

No. 146402

INCOME TAX RECEIPT

Assessment No. 30708–31

NATIONAL CITY BANK OF NEW YORK

.....
(Taxpayer's name)

.....
(Address)

Manila

.....
(Agent's name)

.....
(Address)

Taxable period covered by this receipt from .....
....., 192.....

to ..... Dec. 25 ....., 1931

Tax due as per return	₱15,566.15
Additional tax due as per	.....
100 per cent surcharge	.....
50 per cent surcharge	.....

Interest 1 per cent per month	.....
Compromise	.....
Total	₱15,566.15

Date *June 3, 1932*

Received the sum of fifteen thousand five hundred sixty-six pesos and fifteen centavos, as specified above.

VICTOR ALFONSO
City Treasurer

JUAN POSADAS, Jr.
Collector of Internal Revenue

"By (Sgd.) ?
Internal Revenue Officer

Station ..... Manila ....., P. I.

NOTE.—Payment of the tax indicated above is not conclusive as to ultimate tax liability. 4—49.

NOTICE

This receipt should be executed in triplicate by inserting carbon papers between the copies. The original is to be delivered to the taxpayer, the duplicate forwarded to the Bureau of Internal Revenue with the monthly report of collections of the deputy provincial treasurer, and the triplicate retained by the collecting officer for his permanent record.

Taxpayers are cautioned to see that the amount paid by them corresponds to the figures appearing on this receipt.

MANILA, *August 29, 1933*

I hereby certify that this is a true copy of the original on file in the Bureau of Internal Revenue and that I am the legal custodian of the Income Tax Records of said Bureau.

(Sgd.) CRISPIN LLAMADO
Chief, Income Tax Division
Bureau of Internal Revenue

Exhibit I

B. I. R. No. 556
NEW B. I. R. No. 25.06 COUPON

MISCELLANEOUS TAX-RECEIPT No. 7999549

Schedule G Paragraph 1

Assessment No. 3

GOVERNMENT OF THE PHILIPPINE ISLANDS

INTERNAL REVENUE TAX

Province: ..... Manila. .....
Municipality: .....
Taxpayer's name: The National City Bank of New York.
.....
Locality: .....

Average Deposit Tax	₱60,543.79
Local Foreign Bank Short-tax	675.64
Capital employed	
Amount paid Compromise	16,104.68
Penalty	
Total	11,324.11

Remarks: for the six months ending June 30, 1931. Paid under protest.

.....
.....
.....
.....

The above paym't cover the { Tax / Short-tax / Compromise / penalty imposed } on tax receipt

Above mentioned, for ..... Quarter of 193.....
Date of payment October 27, 1931.

JUAN POSADAS
Collector of Internal Revenue

By (Sgd.) ? .....
(Signature of Internal Revenue Officer)

MANILA, *August 29, 19?*

I hereby certify that this is a true copy of the original on file in the Bureau of Internal Revenue and that I am the legal custodian of the income-tax records of said Bureau.

(Sgd.) CRISPIN LLAMADO
Chief, Income Tax Division
Bureau of Internal Revenue

Exhibit J

THE NATIONAL CITY BANK OF NEW YORK
ESTABLISHED 1912

MANILA, P. I., *October 23rd, 1931*

The COLLECTOR OF INTERNAL REVENUE,
Manila, P. I.

We enclose our cheque for ₱77,324.11 in payment of Deposit and Capital Taxes for the period January/June 1931.

This payment is made under protest and duress and solely to avoid penalties, fines and forfeitures.

The grounds of such protest are as follows:

(1) That The National City Bank of New York is a national banking association duly organized under the United States National Banking Act and is an agency of the United States created under its laws to promote the fiscal policies of the United States.

(2) That The National City Bank of New York has been duly authorized by the Federal Reserve Board to establish a branch in the Philippine Islands, and is

now operating the same under the provisions of the United States Federal Reserve Act.

(3) That no estate, territory or possession of the United States or any subdivision thereof has the power to tax national banks except as Congress expressly permits; that no such power has been granted to the Philippine Government.

(4) That under the provisions of the National Banking Act (sec. 548, Title 12, U. S. Code) each state may tax national banking associations in any one of four forms but the imposition of any one of such forms shall be in lieu of the others except that in the case of a tax upon net income, individuals may be taxed upon dividends from national banking associations if the law of the state provides for such a tax upon all business corporations and dividends therefrom.

(5) That the Philippine Islands imposes a tax upon net income and is therefore without power to impose any capital, deposit or other tax of any kind upon such national banking association.

Yours very truly,

(Sgd.) F. C. BAILEY
Pro-Manager

MANILA, *August 29, 1933*

I hereby certify that this is a true copy of the original on file in the Bureau of Internal Revenue and that I am the legal custodian of the income tax records of said Bureau.

(Sgd.) CRISPIN LLAMADO
Chief, Income Tax Division
Bureau of Internal Revenue

Exhibit K

CAPITAL TAX JANUARY/JUNE 1931

December 1930 Capital	$110,000,000.00
Surplus	90,000,000.00
Undivided profit	24,554,298.54
	$224,554,298.54
Dividend paid March 31	$4,510,000.00
January capital	$224,554,298.54
February	226,336,015.78
March	228,117,733.02
April	225,389,450.26
May	227,171,167.50
June	228,952,884.74
	$1,360,521,549.84
Average	$226,753,591.64
	$453,507,183.28
Corporation profits	$10,690,303.41
	₱21,380,606.82
Average profit	$1,781,717.24
Manila and Cebu profits	$151,851.11
	₱303,702.22
January capital	$224,554,298.54
January profit	1,781,717.24
February capital	$226,336,015.78
February profit	1,781,717.24
March capital	$228,117,733.02
March profit	1,781,717.24
	$229,899,450.26
Less dividend	4,510,000.00
April capital	$225,389,450.26
April profit	1,781,717.24

Exhibit K—Continued

CAPITAL TAX JANUARY/JUNE 1931—Continued

May capital	$227,171,167.50
May profit	1,781,717.24
June capital	$228,952,884.74

Average capital 453,507,183.28
Our profit 303,702.22

90701436656
90701436656
90701436656
3174550282960
136052154984
1360521549840

21,380,606.82 : 1377311383480828816 : 6,441,872.28
12828364092

944728[illegible]28
8552242728

8952547000
8552242728

4003042728
2138060682

18649820462
17104485456

15453350068
14966424774

4869252948
4276121364

5931315841
4276121364

1655194477

¼ % 16,104.68

EXHIBIT L

Form 2130—Call No. 329
TREASURY DEPARTMENT
OFFICE OF THE COMPTROLLER OF THE CURRENCY
STATISTICAL—REVISED February, 1931
Reserve District No. .....
Charter No. .....

PLEASE READ ACCOMPANYING INSTRUCTIONS CAREFULLY

Every blank space and schedule must be filled in. Where there are no figures to report, the word "None" must be written or stamped. Printed items on this blank must not be scratched or amended in any manner. Any amounts which can not be properly included in the printed items must be entered under "Other Assets" or "Other Liabilities."

Report of condition of the National City Bank of New York of Manila, P. I., in the State of ....., at the close of business on June 30th, 1931.

	Insert Word "None" If no Amount Is to be Entered at Right	Dollars
RESOURCES		
1. Loans and discounts (must agree with Schedule E)		8,210,765.45
2. Overdrafts		15,709.02
3. United States Government securities owned (must agree with Schedule F)	None	
4. Other bonds, stocks, and securities owned (must agree with Schedule G)		568,539.08
5. Customers' liability on account of acceptances executed by this bank and by other banks for account of this bank (exclusive of acceptances of this bank purchased or discounted, included in loans and discounts, and of anticipations by customers	None	
6. Banking house $28,041.43 Furniture and fixtures $		28,041.43
7. Real estate owned other than banking house		.50
8. Reserve with Federal Reserve Bank	None	
9. Cash and due from banks (must agree with Schedule I)		1,171,506.52
10. Outside checks and other cash items		65,553.78
11. Redemption fund with U. S. Treasurer and due from U. S. Treasurer	None	
12. Acceptances of other banks and bills of exchange or drafts sold with indorsement of this bank (must agree with per contra item 27)		1,078,412.84

	Insert Word "None" If No Amount Is to Be Entered At Right	Dollars
RESOURCES—Continued.		
13. Securities borrowed (must agree with per contra item 30)	None	
14. Other assets (must agree with Schedule M)		201,681.69
TOTAL		11,340,210.31
LIABILITIES		
15. Capital stock paid in	None	
16. Surplus	None	
17. Undivided profits—net	None	
18. Reserves for dividends, contingencies, etc	None	
19. Reserves for interest, taxes, and other expenses accrued and unpaid		132,970.41
20. Circulating notes outstanding	None	
21. Due to banks, including certified and cashiers' checks, and cash letters of credit and travelers' checks outstanding (must agree with Schedule J)		638,050.28
22. Demand deposits (except bank deposits) subject to reserve, including deposits due in 30 days or less or subject to less than 30 days' notice (must agree with Schedule K)		3,374,170.60

23. Time deposits (deposits payable after 30 days or subject to 30 days' or more notice) and Postal Savings deposits (must agree with Schedule L)			5,287,569.48
24. U. S. deposits (other than Postal Savings), including war-loan deposit account and deposits of United States disbursing officers		None	
25. Agreements to repurchase U. S. Government or other securities sold		None	
26. Bills payable and rediscounts (must agree with Schedule H)		None	
27. Acceptances of other banks and bills of exchange or drafts sold with indorsements of this bank (must agree with per contra item 12)			1,078,412.84
28. (a) Acceptances executed by this bank for customers and to furnish dollar exchange $		None	
(b) Less acceptances of this bank purchased or discounted and included in "Loans and discounts"		None	
29. Acceptances executed by other banks for account of this bank		None	
30. Securities borrowed (must agree with per contra item 13)		None	
31. Other liabilities (must agree with Schedule N)			429,036.70
TOTAL			11,340,210.81

I, ... of the above-named bank, do solemnly swear that the above statement is
(Cashier or President)

true, and that the SCHEDULES attached hereto and those on back of this report fully and correctly represent the true state of the several matters therein contained and set forth, to the best of my knowledge and belief.

....., *Cashier*

Correct.—Attest:

.....
.....
..... } *Directors*

NOTE.—This report must be sworn to by the President or Cashier, attested by not less than three Directors, other than signing officer, and forwarded to the Comptroller of the Currency within five days after receipt of request. (See section 5211, Revised Statutes.)

120

Place for official seal to be affixed by officer before whom acknowledged. See Act February 26, 1881. Notary must not be an officer or director of the bank.

State of ....., County of .....

Sworn to and subscribed before me this ..... day of. ....., 1932, and I hereby certify that I am not an officer or a director of this bank.

My commission expires ...., *Notary Public*

SCHEDULE A—NAMES OF OFFICERS AND DIRECTORS; LIABILITIES, IF ANY, AND SHARES OWNED

Par value of stock, per share, $..... (Enter the names of all officers and directors, whether or not they are indebted to bank).

Number of shares of stock issued .....

1 Name of Officers and Directors	2 Official Title	3 If Officer is Also a Director Indicate by "D"	4 Liability (Individual or Firm) as Payers	5 Liability (Individual or Firm) as Indorsers or Guarantors	6 Checks and Cash Items	7 Overdrafts	8 Number of Shares of Stock of this Bank Owned
.....	.....	.....	$	$	$	$	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
Refer to Head Office Report	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
TOTAL	.....	.....	.....	.....	.....	.....	.....

SCHEDULE B—LOANS EXCEEDING THE LIMIT PRESCRIBED BY SECTION 5200 OF THE REVISED STATUTES (renewed commercial paper and overdrafts must be considered as loans in arriving at a borrower's total liability); also balances due from nonmember banks exceeding 10 per cent of this bank's paid-up capital and surplus.

NAME	FULL AMOUNT OF LOAN OR BALANCE
	$
None.	

SCHEDULE C—CONTINGENT LIABILITIES (not included among Resources and Liabilities)

1. Commercial letters of credit issued, but not used	$1,639,087.15
2. Travelers' letters of credit issued under guaranty or deposit of security, but not used	342,649.18
3. Other credits opened for customers, but not used	
4. Other contingent liabilities	
TOTAL	1,981,736.33

SCHEDULE D—BRANCHES AND BRANCH OFFICES

Refer to Head Office Report—	NUMBER
1. Within corporate limits of head office city	
2. Elsewhere in United States	
3. In foreign countries	
TOTAL	

SCHEDULE E—LOANS AND DISCOUNTS (including rediscounts)

	Insert Word "NONE" If No Amount Is to be Entered At Right	Dollars
1. Acceptances of other banks, payable in United States, owned by this bank	None	
2. Notes, bills, acceptances, and other instruments evidencing loans, payable in foreign countries		1,142,308.28
3. Commercial paper bought in open market	None	
4. Loans to banks and trust companies:		
(a) On securities (U. S. Government securities and securities of the kinds listed in Schedule G)	None	
(b) All other	None	
5. Loans on securities (i. e., loans secured by U. S. Government securities and securities of the kinds listed in Schedule G)—EXCLUSIVE of such loans to banks (Item 4a above):		
(a) To brokers and dealers in securities in New York City	None	
(b) To brokers and dealers in securities outside New York City	None	
(c) To others		2,420,594.92
6. Real estate loans, mortgages, deeds of trust, and other liens on real estate:		
(a) On farm land	None	
(b) On other real estate		2,144,742.90

7. All other loans, including banks' own acceptances purchased or discounted		2,503,119.35
8. All other loans		
TOTAL LOANS AND DISCOUNTS (must agree with Item 1 of "Resources")		8,210,765.45
MEMORANDA:		
9. Loans secured by U. S. Government obligations included in Items 4 and 5 of this schedule		
10. Total loans eligible for rediscount with Federal Reserve Bank (including eligible paper now under rediscount, if any) (see Federal Reserve Board Regulation A)		

SCHEDULE F—UNITED STATES GOVERNMENT SECURITIES OWNED (including securities sold under repurchase agreement)

1. Bonds (including bonds deposited to secure circulation)	None	
2. Treasury notes	None	
3. Certificate of indebtedness	None	
4. Treasury bills	None	
TOTAL U. S. GOVERNMENT SECURITIES OWNED (must agree with Item 3 of "Resources")		

SCHEDULE G—OTHER BONDS, STOCKS, AND SECURITIES OWNED (including securities sold under repurchase agreement)

	Insert Word "NONE" If No Amount Is to be Entered At Right	Dollars
1. Domestic securities:		
(a) State, county, and municipal bonds	None	
(b) Railroad bonds	None	
(c) Other public service corporation bonds	None	
(d) All other bonds	None	
(e) Stock of Federal Reserve Bank	None	
(f) Stock of other corporations	None	
(g) Collateral trust and other corporation notes	None	
(h) Municipal warrants	None	
(i) All other, including claims, judgments, etc	None	
2. Foreign securities:		
(a) Government bonds	None	
(b) Other foreign securities, including bonds of municipalities, etc		568,539.08
TOTAL OTHER BONDS, STOCKS, AND SECURITIES OWNED (must agree with Item 4 of "Resources")		

SCHEDULE H—BILLS PAYABLE AND REDISCOUNTS

BILLS PAYABLE		
1. Advances received on this bank's own promissory note:		
(*a*) From Federal Reserve Bank	None	
(*b*) From other banks and trust companies	None	
2. Certificates of deposit issued to other banks and trust companies for money borrowed	None	
3. Advances received on other instruments given for the purpose of borrowing money	None	
REDISCOUNTS		
4. Notes and bills rediscounted, including notes and bills sold under repurchase agreement or with recourse to this bank:		
(*a*) With Federal Reserve Bank	None	
(*b*) With other banks, trust companies, etc	None	
TOTAL BILLS PAYABLE AND REDISCOUNTS (must agree with Item 26 of "Liabilities")		

SCHEDULE I—CASH AND DUE FROM BANKS (Do not report as "Due from Banks" any amounts not subject to withdrawal without notice)

		Insert Word "NONE" If No Amount Is to be Entered At Right	Dollars
1. United States gold coin			54,444.41
2. Gold certificates		None	
3. All other cash in vault			842,974.97
Subtotal, Items 1 to 3	$897,419.38	(Amount not to be extended)	
4. Items with Federal Reserve Bank in process of collection		None	
5. Due from banks and trust companies in Central Reserve cities:			
(a) New York City		None	
(b) Chicago		None	
6. Due from banks and trust companies elsewhere in the United States		None	
7. Exchanges for clearing house and other checks on local banks		None	
8. Balances payable in dollars due from foreign branches of other American banks		None	
Subtotal, Items 4 to 8	$	(Amount not to be extended)	
9. Due from banks and bankers in foreign countries (exclusive of amounts reported in Item 8)			274,087.14
Total Cash and Due from Banks (must agree with Item 9 of "Resources")			1,171,506.52

SCHEDULE J—DUE TO BANKS (including certified and cashiers' checks, and cash letters of credit and travelers' checks outstanding)

1. Due to Federal Reserve Bank (deferred credits)	None	
2. Due to other banks and trust companies in United States		54,421.11
3. Due to banks in foreign countries		462,585.68
4. Certified and cashiers' checks, including dividend checks, outstanding		15,253.65
5. Letters of credit and travellers' checks sold for cash and outstanding		105,789.84
TOTAL (must agree with Item 21 of "Liabilities")		638,050.28

SCHEDULE K—DEMAND DEPOSITS (EXCEPT BANK DEPOSITS) SUBJECT TO RESERVE (including deposits due in 30 days or less or subject to less than 30 days' notice)

1. Individual deposits subject to check		3,137,440.86
2. Certificates of deposit (other than for money borrowed)		137,988.67
3. State, county, and municipal deposits	None	
4. Other demand deposits		98,741.07
TOTAL DEMAND DEPOSITS (must agree with Item 22 of "Liabilities")		3,374,170.60

SCHEDULE L—TIME DEPOSITS (deposits payable after 30 days or subject to 30 days' or more notice, as defined in Federal Reserve Board Regulation D; and Postal Savings)

		Insert Word "NONE" If No Amount Is to be Entered At Right	Dollars
1. State, county, and municipal deposits		None	
2. Deposits of other banks and trust companies located in:			
(a) United States		None	
(b) Foreign countries		None	
3. Other time deposits:			
(a) Deposits evidenced by savings pass books	number of accounts 9851		5,291,010.53
(b) Certificates of deposit (other than for money borrowed)			396,558.95
(c) Time deposits, open accounts; Christmas savings accounts, etc.		None	
4. Postal savings deposits		None	
TOTAL TIME DEPOSITS (must agree with Item 23 of "Liabilities")			5,687,569.48

SCHEDULE M—ITEMIZED STATEMENT OF "OTHER ASSETS"		SCHEDULE N—ITEMIZED STATEMENT OF "OTHER LIABILITIES"	
Foreign Branches Our A/c	°137,080.33	Head Office Their A/c	$5,416.97
Foreign Branches Their A/c O/D	325.27	Head Office Our A/c O/D	79,548.07
Accounts Receivable	17,314.51	Foreign Branches Their A/c	37,606.98
Prepaid Expenses	14,086.55	Foreign Branches Our A/c O/D	88,131.12
Interest Earned not Collected	15,785.53	Discount and Interest Collected not Earned	13,930.69
Net Operating Loss	17,089.50	Local and Domestic Branches Their A/c	204,402.87
TOTAL (must agree with Item 14 of "Resources")	201,681.69	TOTAL (must agree with Item 31 of "Liabilities")	429,036.70

On October 16, 1933, the trial Judge, after a full consideration of the evidence, oral and documentary, presented by both parties, rendered the following decision:

[CAPTION OMITTED]

DECISION

The issue in this case is one of law. On January 23, 1930, the National City Bank of New York, an association organized and existing under the National Bank Act of the United States (Title 12, Chapter 2, U. S. C. A., Exhibit A), obtained leave from the Federal Reserve Board to open up branch offices in Manila and Cebu, Philippine Islands (Exhibit B). That same year, on the 19th of March, it filed a copy of the articles of incorporation, by-laws, and the order granting the permission spoken of, with the Bureau of Commerce (Exhibits A, B, and C). When the bank began business here, the record does not show, nor is it to the purpose to inquire. The parties are agreed that on October 23, 1931, the Collector of Internal Revenue collected ₱77,324.11 from the National City Bank by way of taxes upon deposits and capital for the first semester of 1931 (Complaint and Answer). The sum was paid under protest (Exhibit J). Income tax was subsequently taken up for the same period, but no question has been raised upon it (Exhibits G and H). The present action, then, was brought to recover the amount of ₱77,324.11 with interest and costs of suit.

The plaintiff produced a number of exhibits and put in witnesses to show the relations between the local branches and the main office. Apart from this, the argument was carried on in writing.

The National City Bank of New York contends that being an instrumentality of the United States Govern-

ment it can not be taxed here except by express permission of Congress. Now the only permission given, allows of taxation upon capital or income or profits, but not any two, still less all three of these together. (Section 548, United States Code, Annotated.)

The defendant meets the issue as follows:

That the instrumentalities of the Federal Government are not taxable except by permission of Congress, it does not deny, but maintains that the rule applied only to states proper, because then the question of supremacy arises between state and federal government, each state government deriving its power not from the central government but from the people of the state; whereas the local government is a creature of the federal government. This puts the problem in a false light. The true basis of the exemption may be discovered by inquiring not whence the taxing power is derived but how that power may be used; the reason is, if this exemption did not exist, an inferior government might tax away the means selected by the federal government to exercise its functions. (See Cooley on Taxation, p. 606, and cases cited.) And this mischief the Philippine Government can work, just as well as any state government. This the defendant partly acknowledges, saying apropos of national banks that laws tending to impair or destroy their efficiency as federal agencies are prohibited, although he goes on to say that the local branches of the National City Bank of New York are not federal agencies and hence taxes imposed on them are not prohibited.

This leads us on the next point whereby, although the defendant does not deny that the National City Bank of New York is a national bank, and therefore an instrumentality of the federal government, he con-

tends that the same thing cannot be said of its local branches. His reasoning runs thus: national banks are instrumentalities of the federal government only because, and so far as, they are employed as depositaries and fiscal agents of that government; but, the local branches of the National City Bank of New York are not so employed; therefore, etc. This ignores the fact (transcript; stenographic notes, pp. 2–7, 10–11) that the local branches of the National City Bank of New York are branches, and treats them independently, as if they were different organizations. To support this stand the defendant cites Pan-American Bank & Trust Co. *versus* National City Bank of New York (6 Fed. 762, 2nd ed.), to the effect that a national bank and its foreign branch are separate entities as regards business transactions between them. But this is nothing to the point, for although a man's arm may in the same manner be contrasted with his body, yet all his limbs plus his head and trunk make but one and the same man. Even so, although in transactions between them, a branch office and the main office are of necessity distinct and even opposing members, yet as regards outsiders, main and branch offices make up but one and the same corporation, one and the same federal instrumentality.

Finally, the defendant denies that the only permission to tax national bank which Congress has given and which applies here is section 548, U. S. C. A. This section, in fact, the defendant claims, is not applicable to the Philippines because it only uses the word "State" and there is nothing to show that this word includes an unincorporated territory "with the status of the Philippine Government." This difficulty is of little importance in view of the following ruling

of our Supreme Court in Thirty-First Infantry Post Exchange *versus* Posadas (54 Phil., 867):

> "The basic rule that without Congressional consent no Federal agency or instrumentality can be taxed by State authority, together with its qualifications, applies not only to the States of the American Union, but also to unincorporated territories with the status of the Government of the Philippine Islands."

The second reason why the defendant maintains that the section named does not apply to the Philippines is found in section 5 of the Jones Law, which provides that statutory laws of the United States subsequently enacted shall not apply to the Philippine Islands, unless specifically provided therein. In view of the doctrine just quoted, the only result of the questioned section's not applying here would be that no tax whatsoever could be imposed upon the plaintiff, since the only permission granted for the purpose, does not apply; and not only the deposit and capital taxes were wrongfully levied, but the income tax as well. The case would end here, then, were it not that the defendant claims there is another section granting the requisite permission, to wit, section 627, U. S. C. A. But the very first sentence of this section shows it to be clearly inapplicable:

> "Any corporation organized under the provisions of this subdivision of chapter 6 shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other corporations organized under the laws of that State which are transacting a similar character of business."

Chapter 6 contains two subdivisions, the first beginning with section 601 and entitled "Establishment by National Banks of Foreign Branches and Investments in Bank Doing Foreign Business," and the second beginning with section 611 and entitled "Organization of Corporations to do foreign Banking." The local branches of the National City Bank of New York were evidently established under the first subdivision, and section 627, invoked by the defendant, applies only to the second subdivision, i. e., corporations organized herein the Philippines for the purpose of doing foreign banking. Therefore, section 627 does not authorize the application of section 1499 of the Administrative Code to the plaintiff.

Considering, then, that the taxes collected from the plaintiff were taken up by virtue of the express permission granted the Philippine Government in section 548, U. S. C. A., it follows in the view of paragraph I (*a*) thereof ("the imposition by said State of any one of the above three forms of taxation shall be in lieu of the others"—"the several States may tax said shares, or include dividends derived therefrom in the taxable income of an owner or holder thereof, or tax the income of such associations"), that only one of these may be levied. As to which tax will stand, it is well known that the taxes paid under protest were levied, assessed, and collected before the income tax, which was not paid under protest: the capital and deposit taxes were authorized by Act No. 2711, whereas the income tax was established about two years later by Act No. 2833. On the other hand, section 548, U. S. C. A., does not authorize the levy of deposit taxes. Consequently, only capital taxes may be imposed upon the plaintiff. The deposit taxes paid under

protest amount to ₱61,219.43 according to Exhibit F, and this sum ought to be returned to the plaintiff, without interest (section 1579, Administrative Code, as amended) or costs.

So ordered.

The attorney for the defendant was notified of the foregoing decision on October 25, 1933, and on November 7, 1933, he filed a motion for a new trial, which reads as follows:

[CAPTION OMITTED]

MOTION FOR A NEW TRIAL

Comes now the defendant by the undersigned Solicitor-General and moves this Honorable Court to set aside the decision rendered in the above-entitled case on October 16, 1933, and to grant a new trial therein, for the following grounds:

1. That said decision is contrary to law.

2. That the evidence presented in this case is insufficient to justify said decision.

The foregoing motion for new trial was denied by the court in an order dated November 11, 1933, copy of which was received by defendant on November 14, 1933, which reads as follows:

[CAPTION OMITTED]

ORDER

The decision entered in this case being in accordance with law and the weight of the evidence presented in the trial of this case,

The petition for a new trial filed by the attorney for the defendant is denied.

So ordered.

On November 16, 1933, the defendant, by his attorney, filed with the court an exception and notice of intention to appeal, which reads as follows:

[CAPTION OMITTED]

EXCEPTION AND NOTICE OF INTENTION TO PRESENT A BILL OF EXCEPTIONS

Comes now the defendant in the above-entitled case by the undersigned Solicitor-General and respectfully excepts to the order of this Honorable Court dated November 11, 1933, notice of which was received on November 14, 1933, denying his motion for a new trial, and hereby gives notice of his intention to present a bill of exceptions in the said case.

The plaintiff was notified of the foregoing decision on October 26, 1933, and on November 15, 1933, it filed an exception and motion for a new trial, which reads as follows:

[CAPTION OMITTED]

EXCEPTION AND MOTION FOR NEW TRIAL

Comes now the plaintiff, by its undersigned attorneys, and hereby excepts to the decision of this Honorable Court in the above-entitled case, dated October 16, 1933, denying plaintiff's right to recover capital taxes paid under protest, and prays that the said decision be set aside, and a new trial granted on the following ground:

1. That the said decision is contrary to law.

The foregoing motion for a new trial presented by the plaintiff was denied by the court in an order dated November 18, 1933, copy of which was received by the

plaintiff on November 21, 1933, which reads as follows:

[CAPTION OMITTED]

ORDER

The decision entered in this case being in accordance with law and the weight of the evidence,

The petition for a new trial filed by the attorneys for the plaintiff is denied.

So ordered.

On November 29, 1933, the plaintiff, by its attorneys, filed with the court an exception and notice of intention to appeal, which reads as follows:

[CAPTION OMITTED]

EXCEPTION AND NOTICE OF APPEAL

Comes now the plaintiff, by its undersigned attorneys, and makes of record its exception to the order of this Honorable Court dated November 18, 1933, denying its motion for a new trial, notice of which order was received by the undersigned attorneys on November 21, 1933, and hereby announces its intention to present the corresponding bill of exceptions.

The bill of exceptions presented by the appellant was approved by the trial court in its order of November 25, 1933, which reads as follows:

[CAPTION OMITTED]

ORDER

No objection having been presented,

The bill of exceptions presented by the attorney for the defendant is hereby approved and certified as correct, and the Clerk of this Court is hereby ordered to forward the same to the Honorable Supreme Court of

these Islands, together with all the evidence, oral and documentary, presented at the trial, for the purposes of the appeal interposed by the said defendant.

So ordered.

Manila, P. I., November 25, 1933.

MARIANO A. ALBERT, *Judge*

The bill of exceptions presented by the plaintiff was approved by the trial court in its order of December 2, 1933, which reads as follows:

[CAPTION OMITTED]

ORDER

No objection having been presented,

The bill of exceptions presented by the attorneys for the plaintiff is hereby approved and certified as correct, and

The Clerk of this Court is hereby ordered to forward the same to the Honorable Supreme Court of these Islands, together with all the evidence, oral and documentary, presented at the trial, for the purposes of the appeal interposed by the plaintiff.

So ordered.

Manila, P. I., December 2, 1933.

MARIANO A. ALBERT, *Judge*

The appeal in this case was docketed in the Supreme Court of the Philippine Islands on December 27, 1933, and it has been given the docket number of G. R. No. 41032.

PROCEEDINGS IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

This case, now bearing G. R. No. 41032, was submitted to the Supreme Court of the Philippine Islands

upon the briefs filed by the parties. The attorneys for the plaintiff-appellant made the following assignment of errors:

[CAPTION OMITTED]

ASSIGNMENT OF ERRORS

I

The trial court erred in refusing to give plaintiff judgment for the amount of the capital tax paid under protest.

II

The trial court erred in denying plaintiff's motion for new trial.

Manila, March 1, 1934.

Respectfully submitted,

ROSS, LAWRENCE & SELPH

By ROBERT JANDA
Attorneys for Plaintiff
414 National City Bank Building, Manila

The attorney for the defendant-appellant made the following assignment of errors:

[CAPTION OMITTED]

ASSIGNMENT OF ERRORS

I

The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is an instrumentality of the United States Government.

II

The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is only subject to the payment of taxes on its capital and not to the payment of taxes on its deposits also as provided for in section 1499 of Act No. 2711 (The Administrative Code), as amended.

III

The trial court erred in ordering the defendant to return to the plaintiff the amount of P61,219.43, which represents the tax on its deposits for the first half of the year 1931, paid under protest by the said plaintiff to the defendant.

IV

The trial court erred in denying defendant's motion for a new trial.

Respectfully submitted.

SERAFIN P. HILADO
Solicitor-General
Attorney for Defendant-Appellant

Manila, February 21, 1934.

After hearing the argument of both parties, the Supreme Court of the Philippine Islands rendered in this case, on September 21, 1934, the following decision:

[CAPTION OMITTED]

DECISION

BUTTE, *J.*:

Under section 1499 of the Administrative Code, the defendant Collector of Internal Revenue of the Philip-

pine Islands assessed against the National City Bank of New York as capital and deposit taxes for the first half of the year 1931 the sum of P77,324.11. On October 23, 1931, the bank paid said taxes under protest. The grounds of the protest were stated as follows:

"1. That the National City Bank of New York is a national banking association duly organized under the United States National Banking Act and is an agency of the United States created under its laws to promote the fiscal policies of the United States.

"2. That the National City Bank of New York has been duly authorized by the Federal Reserve Board to establish a branch in the Philippine Islands, and is now operating the same under the provisions of the United States Federal Reserve Act.

"3. That no state, territory or possession of the United States or any subdivision thereof has the power to tax national banks except as Congress expressly permits; that no such power has been granted to the Philippine Government.

"4. That under the provisions of the National Banking Act (sec. 548, Title 12, U. S. Code) each state may tax national banking associations in any one of four forms but the imposition of any one of such forms shall be in lieu of the others except that in the case of a tax upon net income, individuals may be taxed upon dividends from national banking associations if the law of the State provides for such a tax upon all business corporations and dividends therefrom.

"5. That the Philippine Islands imposes a tax upon net income and is therefore without power

to impose any capital deposit, or other tax of any kind upon such national banking association."

On June 7, 1932, the bank filed its suit to recover the said taxes and alleges substantially the same grounds as those set out in the protest when the payment was made. Upon the hearing of the cause it was established by the evidence that the National City Bank of New York, duly organized under the Act of Congress of June 3, 1864, is located at No. 55 Wall Street in the City of New York with a present capital of $110,000,000. On January 23, 1930, the Federal Reserve Board authorized said bank to establish branches in Manila and Cebu, Philippine Islands. These branches were in operation during the first half of the year 1931, the period covered by the taxes here in question.

On April 30, 1932, the plaintiff bank filed with the Bureau of Internal Revenue of the Philippine Islands a return of its net income from its branches in Manila and Cebu for the year 1931, a total of ₱518,871.61, upon which on June 3, 1932, it paid an income tax of ₱15,566.15 in accordance with the Internal Revenue laws of the Philippine Islands. This tax was paid without protest.

The trial court sustained the capital tax and ordered the deposit tax refunded to the plaintiff bank. Both parties have appealed to this court.

The Collector of Internal Revenue submits the following assignments of error:

"1. The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is an instrumentality of the United States Government.

"2. The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is only subject to the payment of taxes on its capital and not to the payment of taxes on its deposits also as provided for in section 1499 of Act No. 2711 (The Administrative Code), as amended.

"3. The trial court erred in ordering the defendant to return to the plaintiff the amount of P61,219.43, which represents the tax on its deposits for the first half of the year 1931, paid under protest by the said plaintiff to the defendant.

"4. The trial court erred in denying defendant's motion for a new trial."

At the outset it should be noted that the branches of the National City Bank of New York in Manila and Cebu are not separate legal entities. The Act of Congress of December 23, 1913 (U. S. C. Title 12, Sec. 601) provides in part:

"SEC. 601. *Authorization; conditions and regulations.*—Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:

"First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States."

It is shown by the evidence in this case that the local branches of the National City Bank of New York have no separate corporate franchise, no separate capital stock, and are operated directly by the bank through officers and managers appointed and controlled by the National City Bank of New York. The Act of Congress, *supra*, authorizing the establishment of branches clearly does not contemplate separate legal entities for it makes no provision for their form of organization or the amount of capital to be invested therein, as is done with reference to investments by a national bank in other banks or corporations engaged in banking in a dependency or insular possession of the United States as set out in the second paragraph of U. S. C. Title 12, section 601, *supra*. In a word, a "branch" is simply an extension of the business of a national bank to foreign countries, dependencies or insular possessions of the United States. The branch of the National City Bank of New York in Manila is the National City Bank of New York doing business in Manila.

On March 19, 1930, this bank filed with the mercantile register of the Bureau of Commerce of the Philippine Islands copies of its articles of incorporation, its by-laws, the power of attorney granted to its local manager and the order of the Federal Reserve Board granting permission to the National City Bank of New York to establish branches in Manila and Cebu. The very taxes here in question are assessed by the Government of the Philippine Islands against the "National City Bank of New York" and the receipts therefor were issued to the "National City Bank of New York," and quite properly so, for the branch as such has neither assets nor liabilities. It is true that

the bank filed with the Collector of Internal Revenue a statement (Exhibit J) in which it undertook by an arbitrary calculation to furnish the Collector an estimated local capital of its Manila branch as a basis for the assessment of the capital tax. This was computed upon the following proportion: the capital, surplus and undivided profits of the bank ($224,554,298.54) is to its local capital as the total profits of the bank ($10,690,303.41) is to the profits of the Philippine branch ($151,851.11). This computation for the first half of the year 1931 resulted in a hypothetical local capital of ₱12,883,744.56. But this computation, submitted as it was under compulsion and solely for the purpose of estimating the tax which was paid under protest, does not in our judgment constitute any sort of an admission on the part of the bank, and cannot be invoked here to create a corporate entity which does not exist in fact.

In the light of the foregoing, the Collector's first assignment of error must be held to relate to the National City Bank of New York. That a national bank is an instrumentality of the government of the United States is a proposition supported both by actual facts and by so many decisions since the passage of the first national banking act, approved June 3, 1864, that it requires no citation of authorities and cannot be questioned now. It makes no difference in principle whether the bank functions as such instrumentality in its home office or in a branch office. The very act authorizing the establishment of branches provides that such branches may be established "for the furtherance of the foreign commerce of the United States and to act if required to do so as fiscal agents of the United States." Since the appeal in the present case was

lodged in this court, the branch in Manila of the National City Bank of New York has performed an important fiscal service to the United States Government as a depository of gold under the Gold Reserve Act of January 30, 1934. There is, therefore, no merit in the Collector's first assignment of error.

We shall consider together the Collector's second assignment of error which relates to the payment of the tax on deposits and the bank's assignment of error which relates to the capital tax.

Section 1499 of the Administrative Code provides:

> "*Tax on capital, deposits, and circulation of banks.*—Subject to the exemption herein made there shall be collected from banks the following taxes on capital, deposits, and circulation:
>
> "(*a*) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.
>
> "(*b*) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposits, or otherwise, whether payable on demand, or on some future day, for each month, one-eighteenth of one per centum.
>
> "(*c*) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money but not including such as may be retained in the vault of the bank or redeemed and on deposits for said bank, for each month, one-twelfth of one per centum.
>
> "(*d*) 'Bank' as herein used, includes every incorporated or other bank, and every person,

association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale.

" 'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security."

Many attempts have been made by the several states and territories of the United States to levy taxes in one form or another upon national banks without the consent of Congress but they have uniformly failed. Chief Justice White, in the case of Owensboro National Bank v. Owensboro, 173 U. S. 664, 667, 43 Law. Ed. 850, 852, which involved a franchise tax, stated the general principle thus:

"Early in the history of this government, in cases affecting the Bank of the United States, it was held that an agency, such as that bank was adjudged to be, created for carrying into effect national powers granted by the Constitution, was not in its capital, franchises, and operations subject to the taxing powers of a state. M'Culloch v. Maryland, 4 Wheat. 316 (4:579); Osborn v. Bank of the United States, 9 Wheat. 738 (6:204).

"The principles settled by the cases just referred to and subsequent decisions were thus

stated by this court in Davis v. Elmira Savings Bank, 161 U. S. 283 (40:701):

" 'National banks are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt, by a state, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal Government to discharge the duties for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court.'

"It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets, or franchises, were it not for the permissive legislation of Congress.

"The first act providing for the organization of national banks, passed February 25, 1863, chap. 58 (12 Stat. at L. 665), contained no grant of power to the states to tax national banks in any form whatever. Doubtless the far-reaching consequence to arise from depriving the states of the source of revenue which would spring from the taxation of such banks, and the error of not conferring the power to tax, early impressed itself upon Congress; for the following year (13

> Stat. at L. 99, chap. 106) power was granted to the states, not to tax the banks, their franchises or property, but to tax the shares of stock in the names of the shareholders. This provision subsequently was amended and supplemented in various particulars (15 Stat. at L. 34, chap. 7), and the result of this legislation is embodied in section 5219 of the Revised Statutes."

In the case of the First National Bank v. City of Hartford, 273 U. S. 548, 71 L. Ed. 767, the court held void a discriminatory tax on shares of the capital of the bank on the ground that any attempt to discriminate against the capital invested in national bank shares is intended to be forbidden by R. S. 5219, and the court again called attention to the principle involved:

> "National banks are not merely private moneyed institutions, but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property and their shares cannot be taxed under state authority except as Congress consents and then only in conformity with the restrictions attached to its consent. First Nat. Bank v. Anderson, supra, 347 (70 L. Ed. 302, 46 Sup. Ct. Rep. 135); Des Moines Nat. Bank v. Fairweather, 263 U. S. 103, 106, 88 L. Ed. 191, 195, 44 Supt. Ct. Rep. 23."

See also First National Bank of Guthrie Center (Iowa) v. Anderson, Auditor, 269 U. S. 341, 70 L. Ed. 295.

However, it is contended by the Solicitor-General on behalf of the Collector that the principle of exemption from taxation of the instrumentalities of the Federal

Government applies only to the States of the American Union and arises from the peculiar relation between the Federal Government and the State government, each being sovereign within its respective sphere. If a State government should have the power to tax national banks without the consent of Congress, it would be possessed of the power to cripple these national instrumentalities, if not entirely to destroy them. But it is argued that no such relation exists between the Federal Government and a dependency like the Philippine Islands, which is under the direct and plenary control of Congress. Attention is called to section 19 of the Act of Congress of August 29, 1916, 39 Stat. 551, which provides that "all laws enacted by the Philippine Legislature shall be reported to the Congress of the United States which reserves the power and authority to annul the same."

Whatever may be said, *ex hypothesi*, in support of the proposition that no such necessity for exemption from taxation of the Federal instrumentalities exists in the Philippines as in the several States, the contrary is definitely settled by the decisions of this court. We said in the case of the Standard Oil Company of New York *vs.* Juan Posadas, Jr., 55 Phil., 715, 717–718:

> "It would further appear perfectly clear that the principle which prohibits a State from taxing the instrumentalities of the Federal Government applies with equal force to the Philippine Islands. At least, that was our holding in the Post Exchange case. Nevertheless the Attorney-General persists in assuming a difference in tax powers between the relations of the Philippine Government to the National Government and of a State government to the National Gov-

ernment. We are frank to say that we are unable to see eye to eye with the Attorney-General. It would be absurd to think that a derivative sovereignty like the Government of the Philippine Islands, could tax the instrumentalities of the very government which brought it into existence. If a sovereign State of the American Union cannot abridge or restrict the activities of the United States Government, much less can a creature of that Government, as the Philippine Government is, do so."

In the recent case of Genato Commercial Corporation v. Insular Collector of Customs, promulgated March 13, 1934, Vol. XXXII Off. Gaz. No. 69, page 1327, this Court said:

"Without Congressional consent, no Federal agency or instrumentality can be taxed by the Government of the Philippine Islands."

See also National City Bank of New York vs. Domenech, Treasurer of Porto Rico, 71 Fed. (2nd.) 13.

This brings us to the question whether or not the Congress of the United States has given its consent that the National City Bank of New York should be subjected to the capital tax and the deposit tax here involved. The only statute in which Congress has consented that national banks may be subjected to local taxation is R. S. 5219 as amended by the Acts of March 4, 1923, 42 Stat. 1499 (U. S. C. Title 12, section 548), and the Act of March 25, 1926, 44 Stat. Chap. 88, 223. This is in part as follows:

"SEC. 5219. The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing

all the shares of national banking associations located within its limits. The several States may (1) tax said share, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (*a*) the imposition by any State of any of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (*c*) of this clause."

The Solicitor-General on behalf of the Collector contends that R. S. 5219 has never been extended to the Philippine Islands and is limited in its application to States of the American Union. The logical conclusion of his argument is that there are no express limitations or restrictions whatever upon the Government of the Philippine Islands as regards the kind or amount of taxes it may levy upon national banks. It is not so stated but we assume the Solicitor-General would admit the implied limitation that no tax would be valid which would impair the usefulness of such banks as instrumentalities of the Federal Government.

The National City Bank of New York, as appellant, contends that R. S. 5219 was in force in the Philippine Islands before the enactment of the Act of August 29, 1916 (the Jones Law), 39 Stat. 547, and that it was continued in force under Section 6 of said Act which provides:

"SEC. 6. That the laws now in force in the Philippines shall continue in force and effect,

except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States."

It is further intimated that the very Act of Congress authorizing the establishment of branches of national banking associations in the dependencies or insular possessions of the United States makes R. S. 5219 applicable to the Philippine Islands.

It is enough to say that except as provided in R. S. 5219, *supra*, Congress has not given its consent to the taxation of national banking associations as such. The language of that statute, as amended by the Act of March 25, 1926, is plain as to the four forms of taxation authorized. The omission of any reference to capital and deposit taxes in R. S. 5219 means simply that Congress has withheld its consent to these forms of taxation of national banks.

In the recent case of National City Bank of New York vs. Domenech, Treasurer of Puerto Rico, 71 Fed. (2nd.) 13, decided on May 18, 1934, the Circuit Court of Appeals of the First Circuit held avoid a capital tax similar to the one here in question levied by the government of Puerto Rico.

Insofar as the judgment of the court below orders the refund of the deposit taxes paid under protest by the National City Bank of New York for the first six months of the year 1931, the same is affirmed; and insofar as it sustains the capital tax levied for the same period as aforesaid, it is reversed and the defendant Collector of Internal Revenue is ordered to refund to the said bank the entire amount of ₱77,324.11 paid

under protest as capital and deposit taxes, without interest (section 1579, Administrative Code) or costs.

(Sgd.) GEORGE BUTTE

We concur:

(Sgd.) THOS. A. STREET
(Sgd.) GEO. A. MALCOLM
(Sgd.) ANTONIO VILLA-REAL
(Sgd.) J. A. HULL
(Sgd.) J. C. VICKERS
(Sgd.) C. A. IMPERIAL
(Sgd.) LEONARD S. GODDARD
(Sgd.) ANACLETO DIAZ

The Chief Justice took no part.

Justice Santos dissents in separate opinion.

[CAPTION OMITTED]

ABAD SANTOS, *J.* dissenting:

Upon the authority of adjudicated cases, it must be regarded as settled that national banks are agencies of the United States and, as such, are subject to state taxation only as Congress expressly permits. The exemption of federal agencies from state taxation is grounded upon the most fundamental principles which lie at the basis of the dual system of government established in the United States. As stated by the Supreme Court of the United States in South Carolina v. United States, 199 U. S. 437, 448, 50 L. ed. 261: "We have in this republic a dual system of government, national and state, each operating within the same territory and upon the same persons; and yet working without collision, because their functions are different." Again: "The general government and the states, although both exist within the same territorial limits, are separate and distinct sovereignties, acting sep-

arately and independently of each other, within their respective spheres." United States v. Railroad Co., 17 Wall. 322, 21 L. ed. 597. Furthermore: "Within the limits of the powers granted to the federal government, it is supreme. Within the sphere allotted to them the coördinate branches of the general government revolve, unobstructed by any legitimate exercise of powers by the state government. The powers expressly given to the federal government are limitations upon the state authority. But with the exception of these limitations the states are supreme; and their sovereignty can be no more invaded by the action of the general government, than the action of the state governments can arrest or obstruct the course of the national power." Worchester v. Georgia, 6 Pet. 515, 570, 8 L. ed. 483.

In South Carolina v. United States, supra, it was also said: "The two governments, national and state, are each to exercise their powers so as not tc interfere with the free and full exercise by the other of its powers. This proposition, so far as the nation is concerned, was affirmed at an early day in the great case of M'Culloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579, in which it was held that the state had no power to pass a law imposing a tax upon the operations of a national bank. The case is familiar and needs not to be quoted from. No answer has ever been made to the argument of Mr. Chief Justice Marshall, and the propositions there laid down have become fundamental in our constitutional jurisprudence. Osborn v. United States Bank, 9 Wheat. 738, 6 L. Ed. 204; Weston v. Charleston, 2 Pet. 449, 7 L. Ed. 481; New York v. Commissioners of Taxes, 2 Black 620, 17 L. Ed. 451; Bank Tax Case, 2 Wall. 200, 17 L. Ed. 793; The Banks v. The Mayor, 7 Wall. 16, 19 L. Ed. 57."

In their relation to the national or federal government, the Philippine Islands stand in a very different position from that held by one of the States of the Union. Their constitutional states is similar to that of a Territory, and the reason for the doctrines of exemption of federal agencies from state taxation, does not exist in the case of the Philippine Islands. Hence the doctrine should not apply here. This view finds support in the opinion of the Supreme Court of the United States in Talbot v. Silver Bow County Commissioners, 139 U. S. 438, 35 L. ed. 210. Speaking for the court in that case, Mr. Justice Brewer said: "Upon what principle is the power of a state to tax a national bank, without the consent of Congress, denied? The answer to this question was fully given by Chief Justice Marshall in the cases of M'Culloch v. Maryland and Weston v. Charleston, *supra*. Briefly stated, the argument was this: Two distinct sovereignties, the States and the United States, exercise jurisdiction within the same territorial limits. Each has the power of taxation. This power is in its nature absolute and unlimited. Power to tax is power to destroy. Given to the State the power to tax any of the instrumentalities which the United States creates for the exercise of its jurisdiction, and the former may impede, if not wholly stop, the latter in the discharge of its duties as sovereign. Hence, by necessary implication, the absolute exemption from state taxation of any of the instrumentalities—and among them are national banks—which the United States creates for the exercise of its powers and the discharge of its duties. But the whole argument fails when applied to a Territory. It is not a distinct sovereignty. It has no independent powers. It is a political community organized by

Congress, all whose powers are created by Congress, and all whose acts are subject to congressional supervision. Its attitude to the general government is no more independent than that of a city to the State in which it is situated, and which has given to it its municipal organization. Who would contend, in the absence of express legislative provision therefor, that a bank created by or under the laws of a State, and located and doing business in a city of that State, could claim exemption from municipal taxation upon its property? A bank is an institution organized for private business, and with a view to individual profit, although it may serve a public purpose and such public purpose justify its creation; and no such private corporation has any implied exemption from local taxation by a municipal or political organization in which it is situated. The only ground on which exemption from such taxation can be based, in the absence of express legislative provision, is that the tax proceeds from a distinct and independent sovereignty. As the reason for the rule of exemption of a national bank from state taxation fails in respect to a bank located in a Territory, the rule also fails."

It is well settled that, unless restricted by the territorial act, the powers of a territorial legislature extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States. American Insurance Co. v. Canter, 1 Pet. 511, 7 L. ed. 243. Walker v. New Mexico, etc., R. Co., 165 U. S. 593, 41 L. ed. 837. In Severino v. Governor-General, 16 Phil., 366, 383, this court has declared that "the legislative power which was delegated by the President to the Philippine Commission and which was later ratified by the Congress of the United States, was

more comprehensive than the legislative powers now possessed by State government." And in U. S. v. Bull, 15 Phil., 7, 29, this court said: "The legislative power of the Government of the Philippine Islands is granted in general terms subject to specific limitations. The general grant is not alone of power to legislate on certain subjects, but to exercise the legislative power subject to the restrictions stated. It is true that specific authority is conferred upon the Philippine Government relative to certain subjects of legislation, and that Congress has itself legislated upon certain other subjects. These, however, should be viewed simply as enactments on matters wherein Congress was fully informed and ready to act, and not as implying any restriction upon the local legislative authority in other matters. (See Opinion of Atty.-Gen. of U. S., April 16, 1908.)"

In the light of the foregoing authorities, it is, I think, reasonable to conclude that national banks are exempt from local taxation only as Congress so provides either expressly or by necessary implication.

The Philippine Autonomy Act, otherwise known as the Jones Law, vests in the Philippine Legislature general legislative power, except as otherwise therein provided. (Sec. 8.) It also contains a specific grant of power to impose taxes and assessments on property, and license fees for franchises and privileges, and internal taxes, direct or indirect, for the purposes of the Philippine Government and the provincial and municipal governments thereof. (Sec. 11.) There is no express provision either in the Philippine Autonomy Act or in any other Act of Congress which exempts national banks from taxation by the Philippine Government. Is there any such provision from which such

exemption is necessarily implied? I believe the answer must be in the negative. The whole course of congressional legislation with respect to the Philippine Islands, has been characterized by a desire not to deprive the Philippine Government of any revenues to which it is entitled upon moral and equitable consideration. Congress has even provided for the payment to the Philippine Government of taxes collected in the United States on articles coming from the Philippines. In view of this liberal attitude of Congress, I can not persuade myself that it could have intended to exempt the plaintiff-appellant herein from the payment of taxes which are imposed on all banking institutions doing business in the Philippine Islands.

I am, therefore, of the opinion that, in so far as the judgment of the court below sustains the collection of the capital taxes here involved, it should be affirmed; and in so far as it orders the refund of the deposit taxes paid under protest by the appellant, the same should be reversed.

(Sgd.) JOSE ABAD SANTOS

On October 4, 1934, the defendant-appellant filed with the Supreme Court of the Philippine Islands a motion for reconsideration of the foregoing decision, which reads as follows:

[CAPTION OMITTED]

MOTION FOR RECONSIDERATION

Comes now the defendant-appellant, by the undersigned Solicitor-General, and respectfully moves this Honorable Court to reconsider the decision it has rendered in the present case, on the ground that said decision is contrary to the evidence and the law.

I

The decision in the present case is contrary to the evidence of record.

In its decision this Court said: "At the outset it should be noted that the branches of the National City Bank of New York in Manila and Cebu are not separate legal entities. * * * The branch of the National City Bank of New York in Manila is the National City Bank of New York doing business in Manila. * * * The very taxes here in question are assessed by the Government of the Philippine Islands against the National City Bank of New York." (Pp. 3, 4, 5, decision.)

We submit that this finding does not find support in the evidence of record. The branches of the National City Bank of New York in Manila and Cebu have been established under a permit issued by the Federal Reserve Board on January 23, 1930, which authorizes the National City Bank of New York to establish branches in Manila and Cebu, Philippine Islands (Exhibit B). The record shows that the National City Bank of New York, instead of opening a new branch in the City of Manila, bought the assets and pending business of the International Banking Corporation, a banking institution which for a number of years had been operating in these Islands, and continued the operation of the said bank (pp. 123, 124, record; pp. 20, 21, t. s. n.). The branch in the City of Manila of the National City Bank of New York is engaged in all kinds of banking activities (p. 112, record; p. 9, t. s. n.), and is run by a manager who has full power to manage, transact and conduct general banking business in said branch (Exhibit E). Said branch of the National City Bank of New York in Ma-

nila, therefore, transacts and concludes banking business and operates in this jurisdiction in the same manner as any other branch of a foreign bank in these Islands.

In the case of Pan-American Bank and Trust Co. v. National City Bank of New York, 6 Fed. (2.s.), 762, it has been held:

> "A national bank and its foreign branch, organized under Act Dec. 23, 1913, par. 25 (Comp. St., par. 9745), are separate entities as relates to business transactions between them, and a branch bank, which negotiates a draft drawn against a letter of credit issued by the parent bank becomes the legal holder thereof, and their respective rights in relation thereto are governed by the same rules as between unrelated banks."

In the light of the above ruling, it may be concluded that the National City Bank of New York and its branches in Manila and Cebu are separate legal entities, the internal arrangements between said branches and the head-office with respect to the management and operation of the former notwithstanding. While the Philippine Islands is not, in the strict sense of the word, a foreign country to the United States, it is nevertheless not an integral part of the United States, and its financial system is entirely independent from that of the United States.

The taxes on the capital and deposits involved in this case are assessed on the capital and deposits of the branch of the National City Bank of New York in Manila for the first half of the year 1931, as computed by the manager of said branch (Exhibit F). The amounts of said capital and deposits cannot be

hypothetical nor arbitrary. It is admitted that the branch of the National City Bank of New York in Manila is run with funds borrowed from the head-office (pp. 113–114, rec.; pp. 10, 11, t. s. n.). The aggregate, therefore, of the different sums of money borrowed from the head-office of the National City Bank of New York by the said branch constitutes its capital, and such aggregate sum can never be arbitrary nor hypothetical.

We, therefore, submit that the finding in the decision herein to the effect that the branch of the National City Bank of New York in Manila is the National City Bank of New York, New York, doing business in Manila, and that the taxes in question are assessed by the Philippine Government against the National City Bank of New York in New York, finds no support in the evidence of record.

II

The decision entered in this case is contrary to law.

The decision holds that the taxes on capital and deposits in question, assessed and collected under the provisions of section 1499 of the Administrative Code, as amended, is illegal, because a national bank, as an instrumentality of the Federal Government, cannot be taxed by the Philippine Government without the consent of Congress, and the taxes in question are not provided for in R. S. 5219 (sec. 548, Title 12, U. S. C. A.).

We submit that this finding is erroneous. As stated above, the taxes in question are not assessed against the National City Bank of New York in New York, but against its branch in the City of Manila which is a separate entity. While national banks as instrumentalities of the Federal Government may not be taxed by

States government without the consent of Congress, the privilege has not been extended to branches of national banks in dependencies and insular possessions of the United States. Section 6016 of the Act of Congress of December 23, 1913 (U. S. C. A., Title 12, section 601), only authorizes national banking associations to establish branches in foreign countries or dependencies or insular possessions of the United States. The law does not provide that such branches in foreign countries or dependencies or insular possessions of the United States shall enjoy the privilege of immunity from taxation. And it cannot have been intended by Congress that they should, for, if the branch is in a foreign country, how can it claim exemption from taxation by a foreign government?

But even granting, for the sake of argument, that the branch of the National City Bank of New York in Manila is an instrumentality of the Federal Government, nevertheless it should not enjoy the privilege of exemption from local taxes which are not arbitrary and which do not affect their efficiency as such. The principle that States government cannot tax national banks without the consent of Congress has no application to the present case and in this jurisdiction. Aside from the forceful reasoning found in the herein dissenting opinion of Mr. Justice Santos, which is supported by well-established precedents, it may be stated that the application of the principle in this jurisdiction is contrary to the trend of Congressional legislations and court decisions concerning the Philippine Islands.

By section 1 of the Act of Congress of July 1, 1902 (the Philippine Bill), Congress has willed that the Constitution of the United States and all laws of the United States which are not locally inapplicable shall

not apply to the Philippine Isands. Many years ago, this Court has held that "neither English nor American common law is in force in these Islands, nor are the doctrines derived therefrom binding upon our courts." (U. S. v. Cuna, 12 Phil., 241.) In the case of United States vs. Bull (15 Phil., 7), this Court said:

> "The Government of the Philippine Islands is not that of a State or a Territory, although its form and organization somewhat resembles that of both. It stands outside of the constitutional relation which unites the States and Territories into the Union. The authority for its creation and maintenance is derived from the Constitution of the United States, which, however, operates on the President and Congress, and not on the inhabitants of the Philippines and the Philippine Government.
>
> "The legislative power delegated to the Government of the Philippines is granted in general terms, subject to specific limitations. The grant is not alone of power to legislate on certain subjects, but to exercise the legislative power subject to the restrictions stated."

The Act of Congress of August 29, 1916 (the Jones Law) vests in the Philippine Legislature "general legislative power, except as otherwise provided" therein (sec. 8), and provides that "taxes and assessments on property and license fees for franchises, and privileges, and internal taxes, direct or indirect, may be imposed for the purpose of the Philippine Government." (Section 11.)

If the Constitution of the United States and the statutory laws of Congress not locally inapplicable are by will of Congress not extended to the Philippine

Islands; if neither English nor American common law and the doctrines derived therefrom are not in force in this jurisdiction; if the Government of the Philippine Islands is not that of a state or territory, and its legislative powers are granted in general terms, subject to specific limitations; if the Philippine Autonomy Act vests in the Philippine Government general power to legislate and impose taxes for its purpose, there is every reason to hold that the legal principle that a State government cannot tax a national bank without the consent of Congress, which is derived from the Constitution of the United States and is intended to preserve harmony between the Federal Government and the States and territories of the American Union in which the Constitution of the United States is in force, is not applicable to the Philippine Islands.

The decision further states, "It is enough to say that except as provided in R. S. 5219, *supra*, Congress has not given its consent to the taxation of national banking associations as such. The language of that statute, as amended by the Act of March 25, 1926, is plain as to the four forms of taxation authorized. The omission of any reference to capital and deposit taxes in R. S. 5219 means simply that Congress has withheld its consent to these forms of taxation of national banks." (Page 12, decision.)

While we admit that the limitation imposed in R. S. 5219 applies to States and territories where the Constitution of the United States and its statutory laws not locally inapplicable are in force, we nevertheless submit that it is not applicable to the Philippine Islands. Section 5219 of the Revised Statutes, as amended (sec. 548, Title 12, U. S. C. A.), is not and has never been in force in the Philippine Islands.

Under article 1 of the Act of Congress of July 1, 1902, the Philippine Bill, it is provided that "the provisions of section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands." Section 1191 of the Revised Statutes of 1878 provides that "the Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized territories, and in every territory hereafter organized, as elsewhere within the United States." As R. S. 5219 is a law in existence prior to the Act of Congress of July 1, 1902, by virtue of section 1 of the Act of Congress of July 1, 1902, it is not in force in the Philippine Islands. The limitations, therefore, upon the power of the Philippine Government to tax national banking associations are not found in R. S. 5219, but in the universal principle that no tax would be valid which would discriminate against or impair the efficiency of such associations as instrumentalities of the Federal Government.

Do the taxes on capital and deposits imposed by section 1499 of the Administrative Code, as amended, discriminate against national banks? Are said taxes arbitrary? Do they impair the efficiency of national banks as instrumentalities of the Federal Government?

The taxes imposed in section 1499 of the Administrative Code, as amended, applies to all banking institutions, without distinction, doing business in the Philippine Islands. They consist of one twenty-fourth of one per centum upon the capital employed for each month, and one-eighteenth of one per centum upon the average amount of deposits of money for each month. No claim, therefore, that it is discriminatory, nor that it will impair the efficiency of the plaintiff as a Federal agency, can be successfully urged.

Representing, as they do, only a very insignificant percentage of the capital and deposits, said taxes certainly would not affect the financial condition of so big and powerful an institution as the plaintiff to the extent of impairing its efficiency as a Federal agency.

Furthermore, it is a well-settled rule that not all state laws taxing national banks are invalid. In the case of First National Bank v. Missouri (263 U. S., 640), it has been held:

> "National banks are subject to state laws that do not interfere with the purpose of their creation, tend to destroy or impair their efficiency as Federal agencies, or conflict with the laws of the United States."

As section 1499 of the Administrative Code is not in conflict with any Congressional legislation, and as the taxes therein imposed do not interfere with the purpose for which the National City Bank of New York was created, nor tend to impair or destroy its efficiency as a Federal agency, the said section is valid and the taxes assessed thereunder against the branches of the plaintiff, the National City Bank of New York, in the Philippine Islands are perfectly legal.

Moreover, Congress has by necessary implication consented that the Philippine Government tax national associations in these Islands. Under section 19 of the Act of Congress of August 29, 1916, Congress has reserved to itself the power to annul any law enacted by the Philippine Legislature. Section 1499 of the Administrative Code, which imposes capital and deposit taxes on all banking institutions doing business in the Philippine Islands, without distinction, has been reported to Congress, and this body has not annulled the same. Congress, therefore, has impliedly consented

that all banks in the Islands, including branches of national banks, should pay the taxes imposed in said section of the Administrative Code.

The decision cites the case of Standard Oil Company of New York vs. Juan Posadas, Jr. (55 Phil., 715). With due deference to this Court, we submit that the ruling in said case should not be applied to this case in all its force. The entities concerned in that case are the Army and Navy of the United States, which are instrumentalities of the Federal Government essential to its existence. In that case, therefore, there are powerful reasons to hold that the Philippine Government cannot tax them without the consent of Congress. In the present case, on the other hand, the entity concerned is a bank, primarily organized for profit and engaged in private banking business, although incidentally and occasionally used to perform for the Federal Government fiscal services. The conditions that obtain in the Standard Oil case are, therefore, absent in the present case. It is submitted that in the application of the rule, the character of the instrumentality concerned should be considered. The rule should not be applied when its application will enrich a private institution and work injustice to other institutions engaged in the same business, which are entitled to the same degree of protection from the Government.

The decision also cites the case of the National City Bank of New York v. Domenech, Treasurer of Porto Rico [71 Fed. (2. s.), 13]. This decision has no application to the present case. The territory of Porto Rico does not occupy the same position with regard to the United States as the Philippine Islands. Under the Organic Act of Porto Rico, the statutory laws of

the United States, not locally inapplicable, have the same force and effect in Porto Rico as in the United States (sec. 14, Act of Congress of April 12, 1900). The same relations, therefore, that exist between the Federal Government and the States and territorial governments obtain in Porto Rico, a situation which does not obtain in the Philippine Islands.

CONCLUSION

In view of the foregoing, we respectfully move this Honorable Court to reconsider its decision entered in this case, and to enter therein another affirming the judgment of the lower court in so far as it sustains the collection of the capital taxes herein involved, and reversing the same in so far as it orders the defendant to refund to the plaintiff the deposit taxes paid under protest by said plaintiff. It should be remembered that the branches of the National City Bank of New York in Manila and Cebu are engaged in general banking business in this jurisdiction. To exempt them, therefore, from the taxation in question will give them an undue advantage over other banks doing business in this jurisdiction, including the Philippine National Bank which is largely capitalized by the Philippine Government. We plead for a ruling that will discriminate against none and do justice to all, and that will restore to the Philippine Government the right to tax banking associations doing business in this jurisdiction and make them bear their just share of the burdens of that government whose protection they so constantly and persistently invoke.

Respectfully submitted.

(Sgd.) SERAFIN P. HILADO
Solicitor-General

MANILA, *October 3, 1934.*

Copy served on Messrs. Ross, Lawrence & Selph, Attorneys for the Plaintiff-Appellee, National City Bank Building, Manila.

The above petition for reconsideration was denied by the Supreme Court in a resolution dated October 6, 1934, which read as follows:

In case G. R. No. 41032, The National City Bank of New York vs. Juan Posadas, Jr., etc., the court *in banc* having under consideration the motion of the Solicitor-General in behalf of the defendant and appellant praying that the decision of this court of September 21, 1934, be reconsidered, DENIED the motion. Justice Santos voted to grant the motion.

On October 9, 1934, the defendant-appellant, by its counsel, filed with the Supreme Court the following exception, notice of intention to petition the Supreme Court of the United States for a writ of certiorari, and motion for a stay of execution:

[CAPTION OMITTED]

EXCEPTION, NOTICE OF INTENTION TO PETITION THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI, AND MOTION FOR A STAY OF EXECUTION.

Comes now the undersigned Solicitor-General, in behalf of the defendant-appellant in the above-entitled action, and respectfully excepts to the resolution of this Honorable Court denying his motion for a reconsideration of the decision entered in said action, notice

of which was received on October 9, 1934, and to the final judgment entered therein.

Notice is hereby given that the defendant-appellant intends to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment entered by this Honorable Court in the above-entitled action.

The grounds, *inter alia*, upon which the defendant-appellant intends to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this Honorable Court hereinabove referred to are:

1. That the decision and judgment entered in this action by this Honorable Court are contrary to law.

2. That in this action several statutes of the United States, to wit: R. S. 5219, as amended (sec. 548, Title 12, U. S. C.), the Act of Congress of December 23, 1913 (sec. 601, Title 12, U. S. C.), and sections 8 and 11 of the Act of Congress of August 29, 1916 (the Jones Law), are involved.

3. That the value in controversy in this action (P77,324.11) exceeds twenty-five thousand dollars ($25,000).

The defendant also respectfully prays for a stay of execution of the judgment entered in the present action during the pendency of the application for the writ of certiorari and of the proceedings to be had in the Supreme Court of the United States.

On October 10, 1934, the Supreme Court of the Philippine Islands adopted the following resolution:

Upon consideration of the motion of the Solicitor-General filed in case G. R. No. 41032, The National

City Bank of New York vs. Juan Posadas, Jr., etc., excepting to the order of this court denying his motion for reconsideration of the decision entered therein, as well as to the final judgment to be entered, giving notice of his intention to petition the Supreme Court of the United States for a writ of certiorari for the review of said decision and judgment, and praying for a stay of execution of the judgment during the pendency of the application for the writ of certiorari and of the proceedings to be had in the Supreme Court of the United States, IT IS ORDERED that the exception be noted and the prayer for stay of execution be GRANTED.

On October 10, 1934, the Supreme Court of the Philippine Islands entered in the case a final judgment, which reads as follows:

[CAPTION OMITTED]

JUDGMENT

[File No. 41032]

OCTOBER 10, 1934

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 21st day of September, A.D. nineteen hundred and thirty-four;

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 16th day of October, nineteen hundred and thirty-three, and from which the above-entitled appeal was taken, be, and the same is hereby,

affirmed insofar as the court below orders the refund of the deposit taxes paid under protest by the National City Bank of New York for the first six months of the year 1931; and insofar as it sustains the capital tax levied for the same period as aforesaid, it is reversed and the defendant Collector of Internal Revenue is ordered to refund to the said bank the entire amount of P77,324.11 paid under protest as capital and deposit taxes, without interest (section 1579, Administrative Code) or costs.

It is further ordered that * * * recover from * * * the sum of P * * * as costs.

V. ALBERT
Clerk of the Supreme Court of the Philippine Islands.

Certified correct:
(Sgd.) V. ALBERT
Clerk, Supreme Court

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS
SUPREME COURT OF THE PHILIPPINE ISLANDS

I, Vicente Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing ..... printed pages contain a true and correct transcript of the record of the case, entitled "The National City Bank of New York, plaintiff-appellant, *versus* Juan Posadas, Jr., Collector of Internal Revenue of the Philippine Islands, defendant-appellant," bearing No. 41032 of the General Register of the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this ..... day of ....., A. D., 1934.

VICENTE ALBERT
Clerk of the Supreme Court
of the Philippine Islands.

[fol. 177] [Stamp:] Office of the Clerk, Supreme Court U. S. Received April 3, 1935.

SUPREME COURT OF THE UNITED STATES
October Term, 1934

No. —

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, Petitioner,

vs.

NATIONAL CITY BANK OF NEW YORK

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRIT OF CERTIORARI

On consideration of the motion of counsel for petitioner in the above-entitled cause, and good cause therefor having been shown,

It is ordered that the time within which petition for writ of certiorari may be filed herein be, and the same is hereby, extended for a period of sixty days from April 10, 1935.

Geo. Sutherland, Associate Justice of the Supreme Court of the United States.

Dated this 3rd day of April, 1935.

Endorsed: Supreme Court of the United States, October Term, 193—. Term No. ——. Juan Posadas, Jr., Collector, vs. National City Bank of New York. Order extending time within which to apply for writ of certiorari. Filed Apr. 3, 1935.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1935

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.